

Exhibit P
(Redacted)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NuStar Farms, LLC,)
Anthony Nunes, Jr.,)
and Anthony Nunes, III,) Case No.
5:20-cv-04003-CJW-MAR
Plaintiffs,)
vs.) VIDEOTAPED DEPOSITION
OF
Ryan Lizza and Hearst) CLETE SAMSON
Magazine Media, Inc.,)
Defendants.)
-----)

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THE VIDEOTAPED DEPOSITION OF
CLETE SAMSON, taken before Janice M. Doud,
Registered Professional Reporter and Notary
Public of the State of Iowa, commencing at 9:02
a.m., September 8, 2021, at 801 Grand Avenue,
33rd Floor, Des Moines, Iowa.

Reported by: Janice M. Doud, R.P.R.

Job No. CS4790654

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<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 Plaintiffs by: STEVEN S BISS</p> <p>3 Attorney at Law</p> <p>4 (Via Zoom)</p> <p>5 LAW OFFICES OF STEVEN S BISS</p> <p>6 300 West Main Street</p> <p>7 Suite 102</p> <p>8 Charlottesville, VA 22903</p> <p>9 (202) 318-4098</p> <p>10 stevenbiss@earthlink net</p> <p>11 Defendants by: NICHOLAS A KLINEFELDT</p> <p>12 Attorney at Law</p> <p>13 FAEGRE DRINKER BIDDLE & REATH LLP</p> <p>14 801 Grand Avenue</p> <p>15 33rd Floor</p> <p>16 Des Moines, IA 50309</p> <p>17 (515) 248-9000</p> <p>18 nick klinefeldt@faegredrinker com</p> <p>19 SCOTT W WRIGHT</p> <p>20 Attorney at Law</p> <p>21 FAEGRE DRINKER BIDDLE & REATH LLP</p> <p>22 90 South Seventh Street</p> <p>23 Unit 2200</p> <p>24 Minneapolis, MN 55402</p> <p>25 (612) 766-7000</p> <p> scott wright@faegredrinker com</p> <p> NATHANIEL S BOYER</p> <p> Attorney at Law</p> <p> (Via Zoom)</p> <p> THE HEARST CORPORATION</p> <p> Office of General Counsel</p> <p> 300 West 57th Street</p> <p> New York, NY 10019</p> <p> (212) 841-7000</p> <p> nathaniel boyer@hearst com</p> <p> Videographer: Andrea Kreutz</p>	<p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Good morning.</p> <p>3 We are going on the record at 9:02 a m. on</p> <p>4 Wednesday, September 8th, 2021.</p> <p>5 Please note that the microphones</p> <p>6 are sensitive and may pick up whispering, private</p> <p>7 conversations, and cellular interference.</p> <p>8 Please turn off all cell phones or</p> <p>9 place them away from the microphones, as they can</p> <p>10 interfere with the deposition audio.</p> <p>11 Audio and video recording will</p> <p>12 continue to take place unless all parties agree</p> <p>13 to go off the record.</p> <p>14 This is Media Unit 1 of the</p> <p>15 video-recorded deposition of Clete Samson, taken</p> <p>16 by counsel for defendant in the matter of NuStar</p> <p>17 Farms, LLC, Anthony Nunes, Jr., and Anthony Nunes,</p> <p>18 III, versus Ryan Lizza and Hearst Magazine Media,</p> <p>19 Inc., filed in the U.S. District Court, Northern</p> <p>20 District of Iowa, Western Division, Case Number</p> <p>21 5:20-cv-04003-CJW-MAR.</p> <p>22 This deposition is being held at</p> <p>23 Faegre Drinker Biddle & Reath, located at 801</p> <p>24 Grand Avenue, 33rd Floor, Des Moines, Iowa.</p> <p>25 My name is Andrea Kreutz from the</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2 Examination by: Page</p> <p>3 Mr. Klinefeldt 6</p> <p>4 Mr. Biss 313</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Exhibit Marked</p> <p>9 (All exhibits were marked prior to the commencement</p> <p>10 of the deposition.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 firm Veritext Legal Solutions, and I am the</p> <p>2 videographer. The court reporter is Janice Doud</p> <p>3 from the firm Veritext Legal Solutions.</p> <p>4 I am not related to any party in</p> <p>5 this action nor am I financially interested in</p> <p>6 the outcome.</p> <p>7 Counsel and all present in the</p> <p>8 room and everyone attending remotely will now</p> <p>9 state their appearances and affiliations for</p> <p>10 the record.</p> <p>11 If there are any objections to</p> <p>12 proceeding, please state them at the time of</p> <p>13 your appearance, beginning with the noticing</p> <p>14 attorney, please.</p> <p>15 MR. KLINEFELDT: Nick Klinefeldt</p> <p>16 and Scott Wright from Faegre Drinker on behalf of</p> <p>17 the defendants.</p> <p>18 MR. BISS: I'm Steve Biss. I</p> <p>19 represent the plaintiffs.</p> <p>20 MR. BOYER: Nate Boyer for the</p> <p>21 defendants, joining remotely.</p> <p>22 THE VIDEOGRAPHER: Thank you.</p> <p>23 Will the court reporter please</p> <p>24 swear in the witness.</p> <p>25</p>

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<p style="text-align: right;">Page 6</p> <p>1 CLETE SAMSON 2 called as a witness, having been first duly 3 sworn, testified as follows: 4 DIRECT EXAMINATION 5 BY MR. KLINEFELDT: 6 Q. Mr. Samson, could you please -- 7 MR. BISS: Hey, Nick? 8 MR. KLINEFELDT: Yes. 9 MR. BISS: Nick, just before you 10 begin, I'm getting a -- I'm getting garbley. 11 I'm getting garble. Can you guys hear me okay? 12 MR. KLINEFELDT: Yeah, we can 13 hear you loud and clear. 14 MR. BISS: Okay. Because when I 15 hear you, it's a little bit garbled, and I just -- 16 if it's a problem that we can fix right now, I'd 17 like to try to do that. 18 I don't want to interrupt the 19 deposition, but I just -- I want to be able to 20 hear every -- every word that -- you know, 21 that's said, and I just don't want to have any 22 issues with -- with not being able to hear, so -- 23 MR. KLINEFELDT: Can you hear me 24 okay now or is it still garbley? 25 MR. BISS: It's a little bit --</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Well, I was retained through plaintiffs' 2 counsel, I should say. 3 Q. Okay. And so you've been hired by 4 NuStar; is that right? 5 A. That's correct. 6 Q. Okay. And is NuStar the one who is 7 paying your fees? 8 A. I -- My invoices would go to 9 plaintiffs' counsel. I'm not sure exactly how 10 the fees are being covered. 11 Q. Okay. You don't know who is paying you? 12 A. No. 13 Q. How much time do you think you've spent 14 on this report that you've produced? 15 A. I probably spent somewhere between -- 16 somewhere between 20 and 25 hours, perhaps. 17 Q. Okay. And you produced a report in 18 this case; is that correct? 19 A. That's correct. 20 Q. Okay. I'm going to show you what I've 21 marked as Exhibit 86, and just if you can -- if 22 you can, take your time to look at that; and, if 23 you can, confirm that that's the report that you 24 produced in this case. 25 A. Yes, it is.</p>
<p style="text-align: right;">Page 7</p> <p>1 that's a little better. I don't know what you 2 did. You probably moved something, but -- 3 MR. KLINEFELDT: Okay. Well, try 4 it out; and if you can't hear okay, just stop. 5 Just let us know and we'll fix it. 6 MR. BISS: Yeah, I'll do that. I 7 just wanted to see if there was something that 8 we could do beforehand, but we'll get through 9 it. Thank you. 10 MR. KLINEFELDT: All right. Yep. 11 Q. Mr. Samson, could you please state and 12 spell your name for the record? 13 A. Clete Samson, C-l-e-t-e S-a-m-s-o-n. 14 Q. Okay. Mr. Samson, what's your role in 15 this case? 16 A. I was retained to serve as a rebuttal 17 expert in relation to two reports that were 18 filed. 19 Q. Okay. And who hired you to do that? 20 A. I was retained by plaintiffs' counsel. 21 Q. Okay. You weren't -- Do you have a 22 client in this matter? 23 A. I do not. 24 Q. Okay. And so you were retained by 25 plaintiffs' counsel and not plaintiff?</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Okay. And then keep that with you the 2 whole time. I want to make sure that you have 3 access to it whenever you need it. Okay? 4 A. Thank you. 5 Q. And so have you ever been engaged as an 6 expert witness before? 7 A. I have not. 8 Q. And so I know as a lawyer you're very 9 familiar with depositions, but I'll go ahead and 10 go over the ground rules just to be safe. 11 You've taken depositions before; 12 correct? 13 A. Yes, hundreds. 14 Q. Have you ever been deposed? 15 A. I have not. 16 Q. And so as I'm sure you tell all the 17 deponents that you have, you know, just ask that 18 you please let me finish asking my question and 19 that we try not to interrupt each other for the 20 benefit of the court reporter. Is that fair? 21 A. Yes. 22 Q. And then, likewise, if you don't hear 23 or understand my question, please let me know 24 and I can repeat it or rephrase it. Okay? 25 A. Will do.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. And then -- And so if you answer my 2 question, I'll assume that you heard it and 3 understood it. Is that fair? 4 A. Yes. 5 Q. And then at any time you need to take a 6 break, just let us know and we'll take a break. 7 Okay? 8 A. Yes. 9 Q. So can you kind of tell us about your 10 educational background, maybe starting when you 11 graduated from high school? 12 A. Graduated from high school in 1999, 13 attended Drake University and then transferred 14 to a smaller liberal arts college called Doane 15 College located in Nebraska, graduated from 16 Doane College in 2003 and went to law school at 17 Arizona State University's College of Law and 18 graduated from Arizona State University in 2006. 19 Q. Okay. Why did you transfer out of 20 Drake? Just curious. 21 A. I played football at Drake, and I 22 transferred to Doane to play football and 23 basketball. I wanted to play both sports, and 24 it's harder to do that at a Division I school, 25 obviously, so --</p>	<p style="text-align: right;">Page 12</p> <p>1 part of 2009 when I -- when I took employment at 2 the United State Department of Homeland Security. 3 Q. Okay. So tell us about that. How did 4 that come to pass? 5 A. Well, they had a trial attorney -- you 6 know, they call it -- ICE or Homeland Security 7 calls it various different, but I'll just refer 8 to it as a federal trial attorney position 9 located in Omaha, Nebraska, which was my 10 hometown, decided to pursue that based on my 11 education credentials and my experience as a 12 litigator at Greenberg Traurig. 13 I was hired by Homeland Security, 14 and I think I was hired in '08, but by the time 15 background and stuff cleared, I started in the 16 early part of -- May of '09. 17 Q. Okay. And so that brought you back home 18 to Omaha? 19 A. Correct. 20 Q. Okay. And then so what was your kind 21 of title and role when you first started with 22 Homeland Security? 23 A. It would be assistant chief counsel. 24 Essentially, my role was to handle a docket of 25 removal hearings for -- for OPLA, which is the</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Oh, that's awesome. 2 And so you graduate law school in 3 2006; right? 4 A. Correct. 5 Q. Any education past law school? 6 A. No. 7 Q. Any formal education? 8 A. No. 9 Q. Okay. And so what is your -- did you 10 have any legal jobs during law school? 11 A. I did. I worked for various law firms 12 in law school, primarily Greenberg Traurig 13 during my second year and my third year; and 14 then after I graduated, that was my first 15 employer as a practicing attorney from 2006 to 16 2009. 17 Q. Okay. And were you an associate there? 18 A. I was an associate, practicing in 19 complex commercial litigation, essentially, and, 20 you know, some employment law and things of 21 those natures. 22 Q. Any immigration? 23 A. You know, I think I handled a few 24 immigration-related cases but really didn't get 25 involved in immigration until around the early</p>	<p style="text-align: right;">Page 13</p> <p>1 legal -- legal agency that works for ICE and 2 services ICE. 3 The -- The other part of my job 4 was -- was to handle work site enforcement cases 5 for Nebraska and Iowa, primarily tailored to I-9 6 investigations and audits and, you know, document 7 audits, things of those nature. 8 And then after about my first 9 year at Homeland Security, I was given the 10 responsibility to oversee the field and serve as 11 a liaison for all the field attorneys and work 12 site enforcement, so I had a lot more connection 13 to Washington, D.C., and the ICE OPLA offices in 14 Washington, D.C., beginning -- I believe that 15 was about 2010. 16 Q. Okay. And did your title change? 17 A. Title did not change and, you know, 18 just something I took on as kind of a collateral 19 duty. We started having -- one of the services 20 that I provided for the agency was to regularly -- 21 regularly distribute summaries of OCAHO decisions, 22 which is the Office of Chief Administrative Hearing 23 Officer, and then to have basically quarterly calls 24 with the 90 or so attorneys throughout the country 25 that -- that handled work site enforcement cases in</p>

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<p style="text-align: right;">Page 14</p> <p>1 their AOR, their region. 2 Q. And how long did you do that? 3 A. All the way through for seven years. You 4 know, we had those -- we had quarterly calls. I 5 also presented on work site enforcement to the 6 agency and to our -- the affiliated enforcement 7 side, HSI. 8 Probably three to four times a 9 year for seven -- for seven years, I regularly 10 traveled to D.C. to present at the ICE OPLA 11 conferences and things of that nature and, you 12 know, essentially became the agency's expert on 13 work site enforcement, which consists of Form 14 I-9 audits and, you know, knowing hires, knowing 15 continued employment, those things, you know, 16 violations of those natures. 17 Q. And so did you -- you kind of have 18 that title and duties until you left Homeland 19 Security? 20 A. That's correct. I left -- I also 21 continued to handle somewhere between -- probably 22 during that time frame somewhere between 100 and 23 150 active document cases in my AOR, which was 24 Nebraska and Iowa, and held those -- held those 25 roles all the way through 2016. I left Homeland</p>	<p style="text-align: right;">Page 16</p> <p>1 receive? 2 A. Well, so, you know, there's general -- 3 there's general training on removability, 4 inadmissibility, the INA. There's training on 5 the INA that they do for new attorneys. 6 I was brought in -- one of the 7 reasons I was brought in was because the work 8 site enforcement program had been dormant for 9 the entirety of President George W. Bush's 10 administration, and ICE was effectively 11 relaunching that in that November '08, May '09 12 time frame. 13 And so I recall that early on 14 when I started, I spent a lot of time in D.C. on 15 the work site enforcement part of it because 16 they were relaunching it. 17 ICE was working with their -- 18 their internal manual on how they were going to 19 approach work site enforcement, and so it was -- 20 it was kind of a nice time to start with the 21 agency in that -- in that area because most of 22 the attorneys that had ever done work site 23 enforcement were Reagan -- Reagan attorneys. 24 And that's obviously when this 25 whole thing started, was in 1986 under President</p>
<p style="text-align: right;">Page 15</p> <p>1 Security in November of 2016 to go into private 2 practice. 3 Q. Okay. And why did you make that change? 4 A. Primarily, just wanted to -- wanted -- 5 always really enjoyed working with Kutak Rock, 6 even -- even as a -- as a government attorney 7 and just wanted to join. I didn't look anywhere 8 but Kutak Rock, which is, you know, the biggest 9 law firm in Nebraska, and I just wanted to work 10 for them. 11 Q. Okay. Did the election have anything 12 to do with it? 13 A. No, not -- not -- you know, I had -- 14 when I had started for Homeland Security, there 15 had just been a change in administration from 16 President Bush, George W. Bush's administration, 17 and President Obama had just taken office, and 18 then there was -- there was another change, 19 obviously, in the administration in November of 20 '16, but it was totally unrelated. I had already 21 kind of begun the process of transitioning over 22 to Kutak Rock in the like September, October time 23 frame. 24 Q. Okay. And so when you started at 25 Homeland Security, what kind of training did you</p>	<p style="text-align: right;">Page 17</p> <p>1 Reagan, so there was kind of a new wave of work 2 site enforcement attorneys coming into the 3 agency. 4 Q. And so did they have like formal 5 classes or trainings that you went to to start 6 off to kind of get you up to speed on 7 immigration? 8 A. They did. I also recall, you know, 9 taking probably between 15 to 20 hours of CLE 10 when I was still at Greenberg Traurig on 11 immigration in preparation for transitioning 12 over to the government, you know, on the basics 13 of removability and admissibility. 14 But, you know, the amount of 15 cases that you handle on the removal side is so 16 large that it is a very quick learning curve in 17 the immigration sense because you'll be handling 18 anywhere from forty -- 45 to 60 cases on a 19 docket on a given day, and so you're having to 20 very quickly identify the immigration issues. 21 So, you know, it's a quick curve. It really is. 22 Q. Okay. A lot of kind of learning on the 23 job? 24 A. Yeah, early on. Early on, yep. 25 Q. Did they have -- Because I remember the</p>

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<p style="text-align: right;">Page 18</p> <p>1 Department of Justice had the NAC in Columbia, 2 South Carolina. You go there and do some 3 trainings. 4 Did you guys have like that? Did 5 you have a place where you went for training? 6 A. Yes. It was in Dallas, and they had -- 7 I think it was a -- it was either a one-week or 8 a two-week new attorney training in Dallas, and 9 I -- so I would have attended that in -- sometime 10 in the summer of 2009, probably. 11 Q. Okay. And then you were always based 12 in Omaha; right? 13 A. I was based in Omaha the entirety of my 14 time at Homeland Security, correct. 15 Q. Okay. 16 A. And Omaha was in a -- was a field 17 office, which is part -- but it was part of a 18 five-state AOR, which would have included the 19 two Dakotas, Minneapolis, and then Nebraska and 20 Iowa. 21 Q. Okay. 22 A. So at that time there was like 12 or 13 23 AORs, so we handled -- we handled the Nebraska 24 and Iowa part of the AOR. 25 Q. Okay. And then I think you said that</p>	<p style="text-align: right;">Page 20</p> <p>1 was expanded the amount of documents that could 2 be presented by employees at the time of hire to 3 establish work authorization. 4 So there was just -- you know, it 5 had been dormant, and then they were -- basically 6 they revamped their manual, and then there was 7 no -- there was no push to go out and be real 8 enforcement-oriented; but it was more of let's 9 get this program going again, you know, to 10 achieve some level of deterrence, I believe. 11 Q. Okay. And so then kind of generally I 12 think you had mentioned that you did work site 13 enforcement, removal proceedings; is that right? 14 A. Removal proceedings. You know, we -- 15 That was the majority of what we did, yeah. 16 Q. What about, like, audits? Did you go 17 out and do employer audits, or is that part of 18 work site enforcement? 19 A. That -- That's part of work site 20 enforcement. When I say "work site enforcement," 21 I'm talking about primarily I-9 audits. And 22 President Obama -- So during President Obama's 23 administration, there really were not the, 24 quote, unquote, raids that had occurred during 25 prior administrations that, you know, you saw</p>
<p style="text-align: right;">Page 19</p> <p>1 they were kind of relaunching work site 2 enforcement when you started; is that right? 3 A. That's correct. 4 Q. What did that mean? What were they 5 going to start doing? 6 A. Well, they updated their -- they updated 7 their manual on how they were going to approach 8 I-9 audits and things. 9 To my recollection, there was -- 10 you know, there was -- IRCA, the Immigration 11 and Control Reform Act was in '86, and then from 12 that period of time they -- the INA obviously ran 13 the sanctions program. They called it employer 14 sanctions. 15 And so they -- After 9/11 the 16 program essentially went dormant, and there was 17 no activity in that program from about 2001 until 18 2008; and then when President Obama took office, 19 I believe one of the enforcement priorities of 20 his office was to make sure employers were hiring 21 properly and complying with -- with both the 22 Immigration Reform and Control Act as well as 23 IIRIRA, which was -- IIRIRA was passed during 24 President Clinton -- Clinton's administration. 25 And essentially what IIRIRA did</p>	<p style="text-align: right;">Page 21</p> <p>1 big enforcement actions take place on work 2 sites. 3 So that had went away, and they 4 really focused on I-9 auditing, which was you go 5 in, you serve an employer with a Notice of 6 Inspection, the employer provides their I-9 7 forms. 8 And then ICE employed auditors, 9 which were basically, you know, forensic 10 auditors, and they would go through each I-9, 11 and then they would levy fines based on any 12 verification violations that they -- that they 13 located during their audit. 14 Our job was -- Once that auditing 15 process was over, my job was to essentially 16 litigate that issue. Because when an employer 17 would retain counsel, then you would essentially 18 litigate that issue with the Office of Chief 19 Administrative Hearing Officer, which is the 20 agency tasked with overseeing work site 21 enforcement. 22 Q. Okay. 23 A. And, you know, it's an ALJ, essentially, 24 a chief administrative hearing judge, that 25 oversees that litigation aspect.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. And how did -- how did Homeland Security 2 decide, you know, who to audit, who to initiate 3 a work site enforcement action against? 4 A. I mean, you know, to my recollection, 5 it was typically random; and a lot of times it -- 6 you know, it was the result of a lot of different 7 sources. 8 That was beyond -- typically, the 9 decision as to who -- as to which companies to 10 audit was made on the law enforcement side before 11 it got to the -- to the lawyers, and that was -- 12 you know, a lot of it was probably pushed down 13 from D.C. to really try to achieve a deterrent 14 perspective. 15 The -- The -- It was sometimes 16 industry-specific. You know, there were trends 17 in industry-specific, you know, construction, 18 hospitality, restaurants, you know, agriculture, 19 things of those natures. 20 So a lot of times it was 21 industry-specific; but, you know, there were 22 also the -- there were also ways in which companies 23 could become on the radar of the -- of the HSI side, 24 which Homeland Security investigations would have 25 been the ones that prompted the investigation.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. And what was that training on? 2 A. This. 3 Q. Work site enforcement? 4 A. Work site enforcement, Form I-9 audits, 5 you know, this specific area that we're 6 discussing today. 7 Q. So other attorneys that were in a 8 different OR would call you with questions? 9 A. Right. They were -- They were 10 essentially instructed to filter all questions 11 through me; and if I could not handle them, 12 you know, based on, you know, my review of the 13 question, then we would -- I'd filter them up 14 to Washington, D.C., if it was more kind of 15 policy-oriented. If it was more legally-oriented, 16 I would just answer those questions. 17 And I probably would receive 18 between 10 and 20 inquiries a week from field 19 attorneys with questions about, you know, what -- 20 you know, an example would be, would this be 21 considered a technical violation or a substantive 22 violation on an I-9, would this be a finable 23 violation, would this -- do you think this -- this 24 rises to the level of constructive knowledge or 25 actual knowledge of a -- of a hiring violation,</p>
<p style="text-align: right;">Page 23</p> <p>1 That's who the auditors worked for, was HSI. 2 Q. Okay. And so they weren't -- the 3 auditors weren't under your supervision; 4 correct? 5 A. They were -- They -- No, they weren't 6 under our direct supervision. They were under 7 HSI's direct supervision; but, you know, we 8 essentially reviewed and signed off on audit 9 results and things like that. 10 Q. Were you -- Were you ever a part of the 11 decision of what employer to audit? 12 A. Never. 13 Q. Okay. And during your time at Homeland 14 Security, you had responsibility for Nebraska 15 and Iowa; is that right? 16 A. As well as I was the liaison for all of 17 the 90 field attorneys. They would filter their 18 questions through me, and then I would directly 19 work with the ICE attorneys in Washington, D.C., 20 to respond to those inquiries and things. 21 So I had a -- I had a national 22 role. In fact, I think it was in 2014 I 23 received an award from ICE OPLA National for my 24 training that I had done for all the field 25 offices in this area.</p>	<p style="text-align: right;">Page 25</p> <p>1 things of that nature. 2 I would handle those locally; and 3 then, you know, more policy stuff about how to 4 handle certain cases would go to Washington. 5 Q. Okay. So you had -- in addition to 6 having firsthand responsibility for Iowa and 7 Nebraska, you had visibility on what was going 8 on elsewhere around the country? 9 A. Absolutely. 10 Q. Okay. And you had mentioned that 11 sometimes the decision on what employers to 12 audit would be industry-based; is that right? 13 A. It seemed like that. Again, I think 14 what I said was that I didn't really have any 15 input into that; but you saw waves of 16 industry-specific audits that occurred, which, 17 you know, was probably the result of some policy 18 decision that was made in Washington that 19 filtered out to the field offices; but, you 20 know, again, that was an -- that was an HSI 21 decision. 22 Q. Okay. During the seven years that you 23 were there, do you ever recall any enforcement 24 actions against dairies? 25 A. Yes. Well, I mean, I recall generally</p>

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<p style="text-align: right;">Page 26</p> <p>1 agriculture enforcement actions. You know, 2 specifically dairies, I don't -- I mean, there 3 was -- I handled hundreds and hundreds of cases, 4 so -- but, in general, I recall quite a few ag, 5 ag-related. 6 Q. Do you -- Could you sit here and say 7 whether you were involved in a dairy work site 8 enforcement action during that seven years? 9 A. I don't -- I don't recall. I really 10 just don't recall. 11 Q. Do you recall ever -- someone ever 12 asking you a question from, you know, outside of 13 your OR about enforcement actions against 14 dairies? 15 A. I mean, again, specific to dairies, no. 16 Farms and ag, you know, I recall pork, you know, 17 some pork -- pork farms, chicken farms, things 18 of that nature. I don't -- I don't know specific 19 to dairy. 20 Q. And so can you kind of walk me through 21 typically what would happen in a work site 22 enforcement action, you know, how it would 23 start, how you would get involved and what would 24 happen from there? 25 A. Yeah. The general -- The general</p>	<p style="text-align: right;">Page 28</p> <p>1 and then the company would have 30 days to 2 request a hearing on those alleged violations. 3 And then once the company requested a hearing, 4 it would, you know, typically then turn into 5 regular litigation, where you would have 6 discovery, a prehearing conference, you know, 7 all those things. There was, you know, 8 settlement authority, settlement negotiations. 9 If they didn't request a hearing, 10 which means they waive their right to a hearing 11 or to challenge the alleged violations, then ICE 12 would issue what's called a final order, and it 13 would be essentially a collectible fine or a 14 collectible judgment against that entity. So 15 that was the -- that was the typical procedure. 16 Q. And then so did you -- did you ever 17 have occasion to actually be at the employer's 18 office when the auditors were there looking at 19 documents? 20 A. No. Typically they wouldn't look -- 21 look at the documents on site. They would get -- 22 They would get the original I-9s, and they would 23 take it back to the HSI headquarters and review 24 them there. 25 Q. Okay. So they would -- they would --</p>
<p style="text-align: right;">Page 27</p> <p>1 procedure was HSI's auditor would serve a 2 document called a Notice of Inspection on an 3 entity. That entity would then have three 4 business days to produce their I-9s to the 5 auditor. 6 The auditor would then take -- 7 You know, they had large caseloads. They would 8 then take two to three months to review the 9 I-9s. They would then write up -- I mean, if 10 there was perfect compliance, we never saw it on 11 my end; but if there was going to be a fine 12 levied or proposed, they would issue what's 13 called a Notice of Intent to Fine, and it was at 14 that point in time when we would review that 15 because then that needed to be legally 16 substantiated. 17 So there was what was called a 18 Notice of Intent to Fine. The reason it's 19 called a Notice of Intent to Fine is because 20 ultimately ICE can't just levy the fine. 21 They're not the judge and the jury. Ultimately 22 it must be sustained by the Office of the Chief 23 Administrative Hearing Officer. 24 So they would issue the NIF. 25 We'll call it a NIF, a Notice of Intent to Fine,</p>	<p style="text-align: right;">Page 29</p> <p>1 they'd issue them a notice, and then they'd show 2 up three days later? 3 A. To pick them up. 4 Q. To pick them up? 5 A. Correct. 6 Q. And I'm assuming they'd get copies? 7 A. No. 8 Q. Or they take the originals? 9 A. No, they take the originals because 10 that's -- you know, when you're looking at 11 backdating and there was an analysis about the 12 veracity of the forms, they wanted originals. 13 I -- You know, in my current 14 practice, which we haven't got to, I always 15 advise companies, in the event of an audit, to 16 make sure they make a corresponding copy so 17 that in the event ICE loses their originals they 18 have that backup; but, no, ICE would take the 19 originals. 20 Q. Okay. And then -- And they wouldn't 21 review them on site. They would just come, pick 22 them up, and they'd review them off site? 23 A. For months on end. 24 Q. Okay. 25 A. Yeah, I mean, depending on how large</p>

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<p style="text-align: right;">Page 30</p> <p>1 the scope of the audit was.</p> <p>2 Q. And then you would get involved if they</p> <p>3 were going to fine somebody?</p> <p>4 A. Right, or if the auditor had a question</p> <p>5 during the auditing, like is this a violation,</p> <p>6 is this a technical, is this a substantive, you</p> <p>7 know, I would be involved just by phone, but I</p> <p>8 didn't get involved from an advocacy standpoint</p> <p>9 for the agency until that NIF was served.</p> <p>10 Q. Okay. Prior to that you're just --</p> <p>11 you're kind of advising the auditor?</p> <p>12 A. Exactly.</p> <p>13 Q. Answering questions, that kind of</p> <p>14 thing?</p> <p>15 A. Exactly.</p> <p>16 Q. And would the auditor have the</p> <p>17 authority to decide whether to fine them --</p> <p>18 A. There would be a --</p> <p>19 Q. -- without talking to you?</p> <p>20 A. There would be -- From my recollection,</p> <p>21 there was a legal sufficiency review, so they</p> <p>22 would -- any NIFs had to be approved through</p> <p>23 counsel, you know, similar to an indictment or --</p> <p>24 Q. Okay.</p> <p>25 A. -- you know, that you would do in DOJ.</p>	<p style="text-align: right;">Page 32</p> <p>1 notice -- file a Notice of Intent to Fine; right?</p> <p>2 A. Yeah. And I think I spoke to that.</p> <p>3 There's a legal sufficiency review before the</p> <p>4 NIF was served on the -- on the entity. So,</p> <p>5 yeah, it passed through the law office, yeah.</p> <p>6 Q. Okay. And that -- And you dealt with</p> <p>7 those?</p> <p>8 A. That's -- Yes.</p> <p>9 Q. And how would it get -- would there be</p> <p>10 like a memo, or how would that get presented to</p> <p>11 you?</p> <p>12 A. Yeah, there was -- there was a file.</p> <p>13 Q. Okay.</p> <p>14 A. There was a file with the write-up, and</p> <p>15 the I-9s were actually in the file, and then I'd</p> <p>16 go -- you know, when I'm doing that sufficiency,</p> <p>17 I would typically go through -- go through the</p> <p>18 I-9s and then try -- you know, basically perform</p> <p>19 a legal sufficiency review that, yeah, I think</p> <p>20 that's sustainable if we get -- if they contest</p> <p>21 that, we can likely sustain that with the ALJ.</p> <p>22 Q. Because you've got to be the one that --</p> <p>23 A. Yeah. Right.</p> <p>24 Q. -- defends it; right?</p> <p>25 A. Right. I mean, it's -- it's really no</p>
<p style="text-align: right;">Page 31</p> <p>1 I mean, they had authority to write it up and</p> <p>2 things, but there was a legal sufficiency</p> <p>3 review.</p> <p>4 Q. Okay. Were there ever administrative</p> <p>5 subpoenas issued with I-9 Notices of Inspection?</p> <p>6 A. Yes. Administrative subpoenas were</p> <p>7 typically attached to the Notice of Inspection,</p> <p>8 and those would ask for corroborating or</p> <p>9 collateral documents. You know, if the company</p> <p>10 participated in E-Verify, it would ask for</p> <p>11 E-Verify printouts, just collateral. It asked</p> <p>12 for payroll records.</p> <p>13 Now, statutorily, ICE only had</p> <p>14 the authority to request the I-9s. The subpoena</p> <p>15 was just attached, you know, in hope that the</p> <p>16 company would comply. They had the authority to</p> <p>17 issue the subpoena; but, statutorily, under the</p> <p>18 regs they only had the right to the I-9s.</p> <p>19 So, you know, there were</p> <p>20 employees -- or, I'm sorry, employers that would</p> <p>21 not comply or would not produce those documents;</p> <p>22 but, yeah, that was part of the standard procedures,</p> <p>23 that an administrative subpoena would be attached.</p> <p>24 Q. Okay. And then the auditor would have</p> <p>25 to get permission from the lawyers to actually</p>	<p style="text-align: right;">Page 33</p> <p>1 different than -- than, you know, an indictment</p> <p>2 and things like that.</p> <p>3 Q. And then in addition to the I-9 forms,</p> <p>4 what else would you get, you know, in terms of</p> <p>5 documents from the employer?</p> <p>6 A. From what I recall, articles of</p> <p>7 incorporation, payroll records, you know, just</p> <p>8 because, you know, it's ICE's burden of proof</p> <p>9 on any -- any -- any of these violations.</p> <p>10 So ICE would have the burden to</p> <p>11 show not only that the entity associated -- or</p> <p>12 the individual associated with the I-9 was an</p> <p>13 employee and had received remuneration so there</p> <p>14 was an employee -- so you had to -- you had to</p> <p>15 establish that first; and then you had to</p> <p>16 establish, you know, whether the I-9 contained a</p> <p>17 violation that was finable.</p> <p>18 And then you also -- you know,</p> <p>19 depending on the alleged -- on the alleged</p> <p>20 violations, particularly if you were going to --</p> <p>21 if ICE was trying to establish a knowing hire or</p> <p>22 a knowing continued employment violation, you</p> <p>23 would also have to establish that the individual</p> <p>24 themselves, the underlying employee, was indeed</p> <p>25 an unauthorized individual.</p>

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<p style="text-align: right;">Page 34</p> <p>1 So you would have to -- you would 2 need that evidence in the form of what's called 3 an I-213, which is -- or a sworn statement where 4 the employee admits to their alienage and their 5 manner of entry. So that essentially is what 6 you're doing on a legal sufficiency review. 7 Q. Okay. And how would you get that I-213? 8 A. That would be produced by an immigration 9 officer, an HSI agent, an agent or an officer. 10 Q. And how would they go about producing 11 that? 12 A. Well, they would typically meet with 13 the -- meet with the individual, the foreign-born 14 individual, and then conduct an interview; and 15 then they would write up the I-213 based on the 16 statements made during that interview. 17 And, see, that was the big -- 18 that's the -- from what I recall when I was on 19 that -- when I was kind of on that side of things, 20 that was the biggest hurdle to any knowing hire 21 or knowing continued employment violations is 22 you have to establish that the person is indeed 23 unauthorized. That's an element of the burden 24 of proof, and that was always a very difficult 25 burden to show.</p>	<p style="text-align: right;">Page 36</p> <p>1 at that point in time. 2 Q. How did you know they were deportable? 3 A. Through the I-213, through the 4 statements that they provided to the immigration 5 officer. 6 Q. And maybe I got wrapped around the axle 7 here, but I thought you said that they did the 8 interview for the I-213 while they were in 9 custody. 10 A. Typically that's the case. 11 Q. And how would they be in custody before 12 they did the I-213? 13 A. That has been challenged all over the 14 country for many, many years. Okay? That's 15 probably an area you don't want to go into, but 16 that -- the pre -- ICE's authority to detain 17 individuals is a constant source of challenge in 18 federal court. 19 Q. But they had to have some basis; right? 20 A. Absolutely. 21 Q. And -- 22 A. Some probable cause or -- Yeah. Right. 23 Right. 24 Q. They had to have -- And I'm certainly 25 not asking you to defend any legal position on</p>
<p style="text-align: right;">Page 35</p> <p>1 And the I-213 or a sworn statement 2 would be the manner in which you would do that 3 because otherwise everything is purely speculative. 4 Right? Until you have a sworn statement that 5 you've taken from the individual themselves about 6 their manner of entry to the United States or their 7 alienage, you don't really know whether or not 8 they are lawful. 9 Q. What if they didn't talk to you? What 10 if they didn't talk to the agent when the agent 11 tried to interview them for that? 12 A. That would be -- You know, I mean, the 13 agents typically -- There were not a lot of 14 situations where the individuals would not 15 provide that information because a lot of times 16 they're in custody, okay, and they're being 17 asked -- they're being asked on where -- you 18 know, where they're from. They're going to 19 provide some of that basic information. 20 So, you know, it's always -- 21 it was always a challenge for our -- for our 22 immigration officers to establish alienage 23 and manner of entry. 24 Q. And so why were they in custody? 25 A. Because they were deportable at that --</p>	<p style="text-align: right;">Page 37</p> <p>1 that, but they had to have some basis to put 2 them in custody; right? 3 A. Typically, yes. Yeah. 4 Q. And probable cause, something like 5 that? 6 A. Right. And we're talking about -- 7 we're kind of wading into removability issues; 8 but to bring us back to where we were, that 9 aspect was only relevant to knowing continued 10 employment violations as part of an I-9 audit. 11 If they were going to -- If ICE 12 wanted to establish a knowing continued 13 employment charge, they would need to establish 14 the person was actually deportable or removable, 15 unauthorized. 16 Q. Okay. And when you're going through 17 the administrative aspect of this or when you're 18 reviewing a work site enforcement audit, how 19 do you make the decision of whether to remove 20 somebody? 21 A. That is -- I mean, that was a decision 22 that was typically made by law enforcement. 23 And, you know, again, my role was always legal 24 sufficiency, were there grounds to remove, 25 and that comes out of INA Section 237 and INA</p>

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<p style="text-align: right;">Page 38</p> <p>1 Section 212. 2 So, you know, I don't know how 3 much you want to get into the weeds, but 4 essentially there's two sources of removability. 5 There's a -- There's inadmissibility, which 6 means the individual was inadmissible at the 7 time of their entry. Okay? Then there's what's 8 called removability or deportability, which is 9 under INA Section 237, which relates to the 10 person made a lawful entry to the United States 11 but something happened to their status while 12 they were here that made them removable. That 13 would be a visa overstay, you know, a lawful 14 permanent resident that has certain criminal 15 grounds of removability. 16 So, you know, that was a -- that 17 was all part of the enforcement side, and they 18 would -- so they would present that, and then 19 those individuals have the right to a hearing in 20 front of an immigration judge, and that's the 21 removal side of the aspect. 22 Work site enforcement is 23 different because it's tailored -- it's -- the 24 deterrent is -- the deterrent is tailored toward 25 the employer, not the employee, typically.</p>	<p style="text-align: right;">Page 40</p> <p>1 certain violations that were substantive. If 2 they were substantive, that meant that they were 3 finable. 4 Q. Okay. And can you give us examples of 5 what would be technical versus what would be 6 substantive? 7 A. For example, in Section 1, if the 8 employee fails to put their date of birth, 9 that's probably a technical violation. If the 10 employee fails to attest to a status, you know, 11 there's four boxes they can choose from, that 12 would be considered a substantive. 13 I always -- When I train on this, 14 I usually say substantive equates to seriousness 15 and goes to the heart of the I-9 itself. 16 And so Section 1 requires 17 employees to attest as to what their status is. 18 Okay? The employer has no control over what 19 they attest to, but they have to ensure it's 20 done. And then, you know, failure to sign and 21 date is typically a substantive violation, which 22 means it's finable. 23 Section 2, failure -- you know, 24 failure of the employer to sign and date, 25 Section 2 would be a substantive violation. If</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. And so when you're doing the reviewing 2 for legal sufficiency and then handling the case 3 thereafter, you're primarily determining what 4 sort of administrative fine should be issued 5 against the employer? 6 A. The fine -- The fine is to fall within 7 a range that are published, and ICE has its -- 8 had its own calculation for how to determine the 9 amount of the fine based on a violation percentage, 10 and those -- that fine range varied; but, you 11 know, there was a separate range for paperwork 12 violations and a separate range for knowing hire 13 violations. 14 Q. Okay. And then were the paperwork 15 violations further broken down into different 16 types of paperwork violations? 17 A. They were. 18 Q. And how was that broken down? 19 A. So, and ICE is public -- this is -- 20 this is, you know, in the public domain. ICE, 21 essentially, within its own -- you know, ICE is 22 the agency tasked with enforcing the CFR, the 23 regulations and the I-9 regulation, so they 24 essentially determined that there were certain 25 violations that were technical in nature and</p>	<p style="text-align: right;">Page 41</p> <p>1 they only get a List B document instead of a 2 List B and C, that would be a missing -- a 3 missing document. That would be a substantive 4 violation. 5 Technical violations would be, 6 you know, failure to -- failure to, you know, 7 write the correct abbreviation for the issuing 8 authority, things -- you know, there's just lots 9 of different ways you can mess up the I-9. So 10 technical are -- basically, they don't go to the 11 heart of the reason we have the I-9. 12 Q. And so what's the heart of the reason 13 you have an I-9? 14 A. To establish identity and work 15 authorization. 16 Q. And so a substantive violation would go 17 to that? 18 A. A substantive violation would be 19 something that would prohibit ICE from 20 determining whether that person is authorized 21 for employment. 22 Q. And so if an employer was committing a 23 substantive violation, would that also mean that 24 the employer is not adequately determining whether 25 they are authorized to work?</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. No, not necessarily. It just means 2 that they have not completed the Form I-9 3 correctly. There's a distinction there, and 4 it's important to talk about in this -- in this 5 realm. 6 Substantive violations can relate 7 to any type of employee, U.S. citizens, lawful 8 permanent residents. It's you didn't do the 9 form right. That's what a substantive violation 10 is. 11 It doesn't go to the underlying 12 analysis of whether that person is indeed 13 authorized. It's just you didn't -- you didn't 14 do the form right. It's really no different 15 than any other federal form in the sense that -- 16 does that -- 17 Q. But there's still a distinction between 18 a technical violation and a substantive violation; 19 right? 20 A. Which is why it's finable, right, which 21 is why the sub -- the substantive violation 22 relates directly to the -- to the CFR, and it 23 would essentially say that you haven't complied 24 with the CFR for completing the Form I-9, the 25 employment verification.</p>	<p style="text-align: right;">Page 44</p> <p>1 to be very widespread. You know, typically there 2 would be like a willful aspect to it. 3 You know, I've handled -- I've 4 represented companies in private practice that 5 have been criminally indicted for, you know, 6 verification issues or authorization issues. So 7 there is a criminal aspect, but it's very rare. 8 Q. The -- Let's go back to the I-213 for a 9 second. You know, aren't there other ways that an 10 employer can learn if someone is not authorized to 11 work in the United States? 12 A. There are essentially two aspects to 13 whether an employer would obtain awareness or 14 knowledge of whether someone is not. 15 There's an actual knowledge 16 component, which the best example of that is 17 the employee just flat out tells you I'm not 18 authorized. And, you know, when I do trainings 19 and things, if the employee tells you they're 20 not authorized or, you know, you learn through 21 some firsthand knowledge that an employee -- that 22 an employee is not authorized for employment, 23 that would be actual knowledge. 24 Constructive knowledge is a much 25 different animal. It's very restricted, but it's</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Right. But it sounds like what you 2 were saying before is that the purpose of work 3 site enforcement is to make sure that employers 4 are not hiring unauthorized workers; right? 5 A. That would be the general policy, yeah, 6 the general reason that you have that. 7 Q. And the most serious type of 8 administrative fine would be a substantive 9 violation? 10 A. Of an administrative fine, it would 11 be -- in my mind the most serious would be a 12 knowing hire or knowing continued employment 13 because that's fined at an even higher level, 14 and it requires a greater burden of proof on 15 ICE's part, which we talked about a little bit. 16 Q. And you can -- And so that could be 17 either a criminal violation or the -- or an 18 administrative violation; is that right? 19 A. Yeah. Your question was what was -- 20 what's the highest level of an administrative 21 violation. There is a -- There are criminal 22 violations that can attach to this for pattern 23 and practice and, you know, various -- there's 24 various criminal sanctions that can attach. It's 25 pretty rare that ICE would go criminal. It has</p>	<p style="text-align: right;">Page 45</p> <p>1 basically -- it's restricted by federal case law, 2 and it's -- you know, it's indicia of situations 3 that occur that may put a reasonable employer 4 on notice that the -- that the person is not 5 authorized for employment. 6 It's that aspect of knowing 7 employment is constantly balanced against 8 discriminatory hiring acts because employers -- 9 and we can talk about that as we get into this, 10 but employers have to constantly find that 11 balancing between what knowledge is being 12 imputed to them and then what is speculation and 13 what is discriminatory speculation and unlawful 14 hiring acts and things of that nature. 15 So it's -- And I -- You know, 16 there's a -- there's a decision out there. I 17 think it's -- I think I put it in my report, 18 actually, the Aramark decision, that really 19 talks about the limits of that construction 20 knowledge aspect because, you know, employers 21 are not required to be federal agents. They're 22 not required to figure out who -- they're just 23 required to make a reasonable inquiry at the 24 time of hire. 25 Q. And we'll talk about actual knowledge</p>

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<p style="text-align: right;">Page 46</p> <p>1 and the forms and everything a little bit more. 2 I was kind of focused on your government 3 experience. 4 A. Sure. 5 Q. But in terms of actual knowledge, I did 6 want to ask you one question. 7 So actual knowledge would 8 obviously include if they told you, you know, 9 Mr. Samson, I'm not authorized to work in the 10 United States; right? 11 A. That's correct. 12 Q. Could it also include if you asked 13 them, hey, are you authorized to work in the 14 United States and they said I'm not answering 15 your question? 16 A. That would be -- You know, that's more 17 of a gray area, if they said I'm not answering 18 the question. If -- It is a permissible inquiry 19 to ask whether someone is authorized. That's 20 what you're doing at the time of hire. If -- 21 And it is on the employee to establish that work 22 authorization. 23 So, yeah, that would be -- that 24 would likely fall under actual knowledge more 25 than constructive knowledge, but you're kind</p>	<p style="text-align: right;">Page 48</p> <p>1 A. If they were already employed, they would 2 have already established work authorization, 3 typically. Right? 4 Q. You know -- 5 A. So now you're wading into constructive 6 knowledge. You're not -- You're out of actual 7 knowledge, and now you're wading into constructive 8 knowledge. 9 So that would be something that 10 might put the employer on constructive notice that 11 there's an issue with the work authorization if a 12 comment like that is made within their -- within 13 their -- within their awareness. 14 Q. Right. What law enforcement might 15 describe as a clue; right? 16 A. Right. Yeah. 17 Q. Okay. So getting back to the process 18 and the work site enforcement, so even if you 19 establish maybe a knowing hire of an 20 unauthorized worker, that could still be either 21 administrative or criminal; right? 22 A. Correct. 23 Q. And I think you said if it's criminal, 24 you apply a little bit different standard or a 25 higher burden?</p>
<p style="text-align: right;">Page 47</p> <p>1 of -- there's kind of an overlap there in the 2 hypothetical that you raised. 3 Q. What if they asserted their Fifth 4 Amendment privilege to any questions about, you 5 know, whether they're here legally or authorized 6 to work in the United States? 7 A. At the time of hire? 8 Q. Yeah. 9 A. To an employer? 10 Q. Even afterwards. 11 A. I mean, I'm not aware -- I suppose if 12 an employee said I'm not going to answer that, 13 then they wouldn't be able to establish work 14 authorization. They would not be able to begin 15 employment then. 16 Q. Okay. 17 A. Right. I mean, in your hypothetical. 18 Q. What if they were already employed? 19 A. If they were already employed? 20 Q. Yeah. 21 A. In the context of a conversation with 22 an employer they asserted -- 23 Q. Yes. 24 A. -- their Fifth Amendment right? 25 Q. Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 A. No. Well, yeah. I mean, if it's 2 criminal, there's a -- there's the obvious 3 criminal burdens of proof. If it's an 4 administrative violation, it's a little bit -- 5 it's a little bit lower. You know, ICE always -- 6 I believe that ICE typically needed to establish 7 by clear and convincing evidence for an 8 administrative knowing violation. 9 Q. Okay. You're proving the same thing 10 but under a lower burden? 11 A. Right. It's an administrative 12 violation. 13 Q. Okay. 14 A. So it's a lower burden of proof. 15 Q. And then you mentioned that an I-213 is 16 one way to establish that the employee is not 17 authorized to work in the United States; right? 18 A. Correct. 19 Q. Aren't there other ways, though, to 20 establish that same thing? 21 A. Again, is your question tailored to how 22 you would establish it with the court, with a 23 judicial tribunal or an ALJ? 24 Q. How an employer would determine if 25 somebody is here -- is not authorized to work in</p>

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<p style="text-align: right;">Page 50</p> <p>1 the United States, right, because an employer is 2 never going to get an I-213; correct? 3 A. Yeah, and I think -- I think we're 4 talking about two different things. When I 5 say -- I'm talking about, yeah, there's -- 6 there's an aspect of establishing knowledge for 7 purposes of the violation; but as far as ICE's 8 burden of proof to actually establish that an 9 individual is unauthorized, that would be 10 through an I-213 or a sworn statement or some 11 admission of the employee as to their manner of 12 entry and their alienage. Okay? 13 Q. Right. I get what you're saying. And 14 so kind of setting aside for a second whether 15 the person actually is unauthorized to work in 16 the United States, how would you go about 17 showing that an employer is knowingly hiring 18 somebody who is unauthorized to work in the 19 United States? 20 A. So you're talking about at the time of 21 hire or during the course of employment? Because 22 there's two different knowing violations. 23 Q. Well, right. Go back to as you're 24 making the legal sufficiency determination, do 25 you typically have an I-213 in the file?</p>	<p style="text-align: right;">Page 52</p> <p>1 without presenting an I-213. 2 A. There is some -- There is some 3 authority for that. I believe there's some 4 authority for that in federal courts, you know, 5 where the -- I don't want to use the word 6 "negligence," but the circumstances were so 7 obvious to the employer that the court found 8 that the individual -- you know, that the burden 9 of proof had been met that they knowingly hired 10 an unauthorized person. 11 A perfect example -- And there's 12 case law out there. A perfect example is where 13 there's employers who provide identity documents 14 to employees. You know, there's some real bad, 15 bad employers out there that have done that and 16 have been caught doing that. 17 There's evidence out there where 18 employers have utilized E-Verify and received a 19 rejection notice, or what's called a 20 nonconfirmation, and then the employer has sent 21 that person to a staffing agency and hired them 22 through the staffing agency so there was no 23 direct employment relationship. 24 There's case law that -- where 25 they -- where courts have found that the employer</p>
<p style="text-align: right;">Page 51</p> <p>1 A. For knowings? 2 Q. Yeah. 3 A. To my recollection, that became a part 4 of the requirement because ICE had lost a lot of 5 cases on that issue and with -- you know, in 6 front of the tribunal, which was OCAHO, because 7 they were -- you know, they were making 8 arguments that the employer knew or should have 9 known that the individual was unauthorized; but 10 that final piece of the puzzle, the actual 11 knowledge or the actual establishment that the 12 person was unauthorized was missing, and OCAHO 13 issued some decisions on that. 14 So I believe that toward the end, 15 whenever they wanted to do a knowing violation, 16 there was typically either a sworn statement or 17 an I-213 or some direct evidence of unauthorized 18 status. 19 Q. Okay. And but ICE had also won cases 20 without the I-213; is that correct? 21 A. Without establishing that in front of 22 a -- 23 Q. In other words, they had won cases in 24 front of the ALJ establishing that an employer 25 had knowingly hired an unauthorized worker even</p>	<p style="text-align: right;">Page 53</p> <p>1 had knowledge of unauthorized status by virtue 2 of the E-Verify nonconfirmation. So, yes, there 3 are cases where that's been established, but it 4 is -- the best piece of evidence you can have is 5 a Form I-213. 6 Q. If you can get it, get it, if you're a 7 government attorney; right? 8 A. Right. 9 Q. But the employer would never receive 10 that; correct? 11 A. No, but the employer would be the one 12 defending against that allegation. 13 Q. And the I-213 is something that would 14 be generated after you had done a work site 15 enforcement, already started a work site 16 enforcement action; correct? 17 A. If you just -- Typically, if you decide -- 18 If ICE decides to not only do an enforcement action 19 against the employer but also the employee, you 20 know, if they want to move to deport the employee, 21 then -- then they would do an I-213. 22 Q. Where does removal proceedings relate? 23 How does that happen? 24 A. Lots of different ways. I mean, removal 25 proceedings are initiated through a notice to</p>

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<p style="text-align: right;">Page 54</p> <p>1 appear, where an ICE agent has made either an 2 arrest or a determination, you know, that the 3 person is removable, and then they put them into 4 removal proceeding. 5 They have an opportunity to 6 challenge their removability in front of an 7 immigration judge and also to file for certain 8 applications that allow them to avoid 9 removability. 10 Q. And so a removal proceeding could take 11 place independent of a work site enforcement 12 action? 13 A. Oh, absolutely. There's -- There's far 14 more removal proceedings, removal cases than 15 there are work site enforcement cases. 16 Q. But could a removal proceeding also 17 occur or arise out of a work site enforcement 18 action? 19 A. Yes. 20 Q. Okay. How would that happen? 21 A. Well, that's -- I mean, you saw that 22 happen a lot under President Trump's 23 administration, where they would go on -- on 24 site, they would arrest the employees and put 25 them in removal proceedings, and then they would</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. But there's more to the I-213 than just 2 where they were born; right? 3 A. Oh, yeah. No, they run criminal 4 history, they run -- it's all in that record of 5 admit -- record of inadmissible alien I think 6 is what it's called. 7 Q. But what else do they ask the employee 8 besides where were you born? 9 A. Well, sometimes they ask where did you -- 10 where do you work, how long have you worked 11 there. So there's employment info in there. 12 There's criminal history in there. There's -- 13 Q. Do they ask them if they're here legally? 14 A. Right. I mean, that's what I'm -- I 15 mean, that's what I'm -- When I say "here 16 legally," you're talking about manner of entry. 17 You're talking about alienage, manner of entry, 18 and status. 19 So manner of entry is what 20 establishes your lawful ability to be here. If 21 I'm here -- If I'm here legally, you know, which 22 is a term that is thrown around a lot; but if 23 I'm here legally, that means I entered in a 24 lawful status. I entered with a visa or I 25 entered as a, you know, immediate family</p>
<p style="text-align: right;">Page 55</p> <p>1 also initiate an audit or levy criminal sanctions 2 against the employer for knowing hire, knowing 3 continue to employ and I-9 audit. 4 So it can happen in two ways, 5 depending on how aggressive the enforcement 6 agency is being, which you saw a lot more of 7 that during -- from 2016 to 2020 than you ever 8 did prior. 9 Q. On either a removal proceeding or a 10 work site enforcement action, what would happen 11 if the agent goes out to complete an I-213, 12 tries to talk to the individual, the employee, 13 and they refuse to talk to them, refuse to 14 answer their questions? 15 A. They would typically -- From my 16 recollection, they would typically put in the 17 I-213 that manner and place of entry is unknown. 18 You know, typically the individual would tell 19 them their alienage, which is where they're 20 from, where they're born. 21 So, you know, in the event that 22 they didn't, they would typically just send the 23 213, say, you know, refuse to answer, and they 24 would just put it in the 213; but, again, that's 25 pretty rare.</p>	<p style="text-align: right;">Page 57</p> <p>1 relative. So that's when I say -- when I say 2 "manner of entry," that's what I'm reflecting. 3 Q. And did you ever do cases where in the 4 I-213 the employer -- or, I'm sorry, the 5 employee wouldn't answer all of the agent's 6 questions? 7 A. There were -- There were -- I do recall 8 some situations where -- not in the context of 9 work site enforcement, but in the context of 10 removability, which you also need an I-213 for 11 removability, there were situations where they, 12 you know, refused to answer, and then we -- 13 we just tried to establish it through other 14 evidence -- 15 Q. Like what? 16 A. -- to the judge. 17 Cross-examination a lot of times. 18 But, again, you're talking about a very -- you're 19 talking about less than probably 1 percent. 20 Most respondents or foreign-born individuals 21 that are placed in the removal proceedings will 22 openly admit where they're from and how they 23 entered. 24 Q. Okay. 25 A. So, yeah, we would -- we would have to</p>

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<p style="text-align: right;">Page 58</p> <p>1 establish it through testimony. You know, 2 sometimes if there were criminal hits, it will -- 3 it would have been established through other 4 documents that you could produce, you know, so -- 5 there's cameras on the border, and there were -- 6 there were databases that reflected entries, 7 and there's fingerprints that would match the 8 individual to that entry point, which -- so we 9 would use that as evidence sometimes. 10 And I'm -- And, again, I'm 11 talking about the manner of entry would be 12 what's called without inspection or parole. It 13 means they entered illegally through the -- 14 through the desert, you know, across the border. 15 So there's other ways that the Homeland Security 16 could establish. 17 Q. And so would you still have -- When you 18 said, hey, look, you know, typically we would 19 have an I-213, if the employee refused to answer 20 the agent's questions, would the agent still 21 issue the I-213 based on other information? 22 A. Yes. 23 Q. Okay. So you could still have an I-213 -- 24 A. If they had -- 25 Q. -- even if the employee didn't talk to</p>	<p style="text-align: right;">Page 60</p> <p>1 of a matter for criminal prosecution? 2 A. Yes. I was involved in -- When I was 3 with ICE? 4 Q. Yeah. 5 A. Yes. I was involved in, I recall, I 6 think, two or three different cases where there 7 was widespread knowing, and it was -- it was 8 those cases that I kind of described where the 9 employer was either recruiting at the border, 10 going down and bringing up, you know, vanloads 11 of individuals from -- from Mexico to work, so 12 there was just direct actual knowledge, or they 13 were supplying identity documents, so there was 14 like wide-scale identity theft or, you know, 15 there were conspiracy elements where they would 16 use staffing agencies. I recall a few of those 17 where I was involved in the decision to go 18 criminal. 19 Q. And what would be your involvement in 20 those? 21 A. Just basically to be an expert resource 22 on things for the U.S. attorney. You know, 23 they would call and they'd say -- we would talk 24 through the evidence. 25 You know, a lot of times those</p>
<p style="text-align: right;">Page 59</p> <p>1 you? 2 A. Yeah. If they had -- If they had 3 probable cause to make a determination that the 4 person -- that the individual was removable or 5 inadmissible, yes. 6 Q. Is the -- On the knowing hire violations, 7 is that established by the same statute under 8 criminal law, the 8 U.S.C. 1324a? 9 A. Yes. 10 Q. Okay. Same elements? 11 A. Right. 12 Q. How would you decide whether to take 13 the case criminally versus administratively? 14 A. That wasn't a decision that we made or 15 that I made on ICE's behalf. That was -- You 16 know, that was between HSI and the DOJ. Because 17 if you're taking it criminally, it has to be 18 brought by DOJ. Removal proceedings are 19 instituted by Homeland Security. 20 So, yeah, that was -- if it was 21 going to go criminal, we didn't really have a 22 lot of say in that, other than just, you know, 23 we would work with our U.S. attorneys and 24 things; but, in general, that wasn't our -- 25 Q. Were you ever involved in the referral</p>	<p style="text-align: right;">Page 61</p> <p>1 document fraud cases and things would, you know, 2 settle out right away or plea out right away, 3 but we would just always -- I mean, I probably 4 talked to the U.S. attorney or the AUSAs on a 5 weekly basis about -- because they did a lot of 6 1546, false claim to U.S. citizenship, and they 7 would use I-9s to establish that because of that 8 Section 1 attestation. 9 Q. It's a felony to falsely claim you're a 10 United States citizen on an I-9; right? 11 A. It is, and it also bars the individual 12 from any relief to stay in the United States. So 13 it's -- it's a felony. There's a lot of those 14 prosecutions. AUSAs get those, like, regularly. 15 Q. Were you ever involved personally in 16 the criminal prosecutions? 17 A. You know, always on -- always in the 18 background. 19 Q. Okay. 20 A. You know, in the sense that I would be 21 there with the AUSA at some hearings. I 22 remember we had some in-chambers hearings and 23 things, but -- so, yeah, I was involved, but 24 not -- 25 Q. Okay.</p>

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<p style="text-align: right;">Page 62</p> <p>1 A. But not -- I was never the listed 2 attorney in that regard. 3 Q. Okay. You never had an appearance on 4 file in a criminal case? 5 A. Not when I was with ICE, no. 6 Q. Okay. This may be -- Well, I'm going 7 to -- Let me ask you about your private 8 practice, and then we can take a break because I 9 think we've got about 24 minutes on the video. 10 So can you kind of describe for 11 us your private practice since leaving the 12 government? 13 A. Yeah. When I left the government in 14 November of '16, I joined Kutak Rock in Omaha, 15 in their Omaha office. Kutak Rock is a national 16 law firm that has 16 offices. Omaha is its 17 biggest office. 18 The -- I was -- immediately 19 joined the employment group as of counsel and 20 did a variety of employment law litigation and, 21 you know, did some commercial litigation; but 22 always at least 50 percent or more of my practice 23 has been representing employers in this area of 24 Form I-9 compliance. 25 A lot of it was proactive. I</p>	<p style="text-align: right;">Page 64</p> <p>1 completed on the first date of employment by 2 the employee, that they need to ensure it's 3 completed properly by the employee, including 4 signed and dated, that Section 2 needs to be 5 done within three business days, and that includes 6 a review of identity and authorization documents, 7 and I tell them that if they don't do it, you 8 know, within compliance, that they're subjecting 9 themselves to fines in the event of an ICE audit, 10 you know, and I tell them to regularly conduct 11 internal audits of their I-9s to make sure they're 12 catching paperwork errors or -- I mean, it's 13 just -- you know, it's -- an I-9 is -- in 14 reality, an I-9 is typically part of a -- of an 15 onboarding packet, and it's one of 15 forms 16 that's getting filled out by an employee when 17 they start their employment. 18 And so there's just lots of ways 19 to mess it up, and so I usually tell employers 20 that the best way to catch those errors is to 21 review -- you know, assign somebody to review 22 them internally and make the corrections. That's 23 what CI -- USCIS advises that, and so that's 24 generally my advice. 25 Q. What do you tell them to do with respect</p>
<p style="text-align: right;">Page 63</p> <p>1 would go out and do internal audits of their 2 I-9s, of their existing I-9s, would do a lot of 3 training of HR professionals. You know, if 4 there was a Notice of Inspection served on an 5 employer, I would -- I would file a G-28 and 6 liaison with the -- with the agency to work 7 through those issues and, you know, settle 8 fines, do any -- you know, just basically 9 represent employers. 10 So that's what I've done since 11 2016. I've had some larger -- well, one in 12 particular I was -- which was a criminal 13 indictment in Nebraska of a -- of a tomato farm 14 that I represented the entity that was actually 15 criminally indicted on some employment violations. 16 So I continue to do that. I do 17 employ -- you know, employment litigation and 18 immigration litigation, essentially. 19 Q. Can you kind of walk us through what 20 you tell employers with respect to filling out 21 I-9s? 22 A. Well, there's a lot of things I tell 23 employers; but, one, that they should do it, you 24 know, that they should do it for every direct 25 hire that they make, that Section 1 needs to be</p>	<p style="text-align: right;">Page 65</p> <p>1 to internal audits? 2 A. So USCIS has a guidance out there, best 3 practices for internal audits. I always advise 4 them that it cannot be done discriminatorily. 5 So they can't just pick and choose who they want 6 to audit. If they're going to do an audit, 7 it needs to be of their entire workforce or a 8 logical segment of their workforce that's 9 nondiscriminatory. 10 That's a real concern, is that 11 you've got employers that are only looking at 12 foreign-born individuals' I-9s or somebody who 13 looks a certain way or talks a certain way and 14 making discriminatory judgments based on that. 15 So there's just as much litigation 16 where employers are fined for discriminatory acts 17 as there is where they're fined for not doing, 18 you know, Form I-9s correctly. 19 So I always warn and advise on 20 that aspect of it. My philosophy is that you 21 should -- an employer should treat every 22 employee in a robotic fashion, where they do the 23 same process for every employee and that they 24 engage and use the same level of scrutiny and 25 diligence for every employee.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Because you don't want an 2 employer pulling out a black light to look at a 3 document for somebody based on the way they look 4 and then, you know, a Caucasian male comes in 5 from Omaha, Nebraska, and they just take the 6 card and make a copy and put it in a drawer. 7 That's discriminatory. That's a discriminatory 8 act. 9 So those are issues that I advise 10 on; but with regard to internal audits, I always 11 provide them with CIS's best practices and just 12 coach them on that. 13 Q. And I think you said that sometimes 14 what you'll do for an employer is go through and 15 actually audit yourself their I-9s; is that right? 16 A. I will -- I will go through and review 17 them and prepare an audit report. I do not 18 touch the I-9s myself. I always instruct them 19 how to fix them. I don't -- I don't audit the 20 form myself, but I'll prepare an audit for them. 21 Typically there's a spreadsheet 22 that says you've got an improper List B document, 23 you know, you need to do XYZ to correct that, you 24 know, that lists out the errors and then instructs 25 them on how to correct that, but I don't -- I</p>	<p style="text-align: right;">Page 68</p> <p>1 an audit standpoint. 2 So, you know, it doesn't take me 3 long, but if -- a lot of times HR departments 4 don't have the budget to have outside counsel do 5 it, so I'll -- you know, their HR people will do 6 it, and I'll just serve as a resource as they do 7 it, and that takes longer; but, you know, for 8 me, I can probably go through 500 I-9s in a day. 9 Q. And then you'd typically produce a 10 spreadsheet or some sort of memo that tells the 11 employer what mistakes they have? 12 A. I do an audit report, which is obviously 13 attorney-client privilege and attorney work 14 product, but it tells them how to fix those I-9s 15 in compliance with CIS's best practices. 16 CIS openly -- USCIS, I should 17 say, is another sub agency. It's like a sister 18 agency of ICE that actually creates the form, 19 creates that M-274, the instructions. 20 So CIS puts all the -- you know, 21 all the instructions out there for employers, 22 and so that's -- you know, they openly advocate 23 that employers do regular internal audits. 24 Q. Okay. And then I think you said you 25 also will defend employers in work site</p>
<p style="text-align: right;">Page 67</p> <p>1 don't like touching an original Form I-9, even 2 though I -- you can legally as long as you attach 3 a memo. I just -- I don't do that. 4 Q. But do they -- How do you actually review 5 the I-9s? Do they send you copies or how does that 6 work? 7 A. Yeah, or I go on site and sit in a dark 8 cave for three days and look through 10,000 I-9s 9 or what -- you know, it's scrupulous work, but 10 I -- you know, I enjoy it, so -- 11 Q. And so when you're doing it on site, 12 you're not looking at the original. You ask 13 them to make a copy or how does that work? 14 A. Well, I always -- the corrections need 15 to be made on an original for it to be a valid 16 correction. So I confirm that they have the 17 original in their possession; but if I do it off 18 site, typically they'll send me a copy. 19 Q. And how long does it take you to go 20 through I-9s? 21 A. I mean, I'm pretty fast. And I've done 22 this, you know, for 15 years, or however long, 23 and so I can get through them and I can spot 24 them. They jump off the page at me. But, you 25 know, I do probably 5- to 7,000 I-9s a year on</p>	<p style="text-align: right;">Page 69</p> <p>1 enforcement actions once they actually are 2 contested proceedings; right? 3 A. Correct. 4 Q. Anything else that we haven't talked 5 about that you do in your private practice? 6 A. I mean, I do commercial litigation, and 7 I do a lot of -- I do a lot of commercial 8 litigation. It's probably half of my practice. 9 Q. So about half of your practice is 10 immigration, half of it is commercial litigation? 11 A. That's correct. There seems to always 12 be some tie to immigration or at least employment, 13 you know, employment regs and things, but I do a 14 lot of -- one other thing I should probably tell 15 you is I do a lot of affirmative visa filings 16 for companies, meaning if they want to bring in 17 an H-1B visa worker, you know, I do those filings. 18 I do entertainment visas. I do 19 O visas for athletes. I do -- You know, I 20 represent companies that are being investigated 21 by the Department of Labor for -- for various 22 H-1B or H-2B visa violations. 23 So, you know, I'm very familiar 24 with that aspect of it, too, what I call the 25 benefit side or the -- you know, so both sides,</p>

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<p style="text-align: right;">Page 70</p> <p>1 compliance and benefit side.</p> <p>2 Q. I noticed on your firm website that you</p> <p>3 have an agricultural practice at the firm. What</p> <p>4 is your involvement with that?</p> <p>5 A. Just -- You know, I -- I usually speak --</p> <p>6 We have an ag seminar every year, so I usually</p> <p>7 speak, and that brings in a lot of our ag clients.</p> <p>8 I mean, Kutak primarily does a lot</p> <p>9 of, like, banking and finance for ag clients;</p> <p>10 but, you know, compliance and things is always</p> <p>11 of interest to agriculture clients, so I usually</p> <p>12 try to make myself a part of their annual seminar,</p> <p>13 even if I only get ten minutes, to just talk about</p> <p>14 the importance of I-9 compliance and things, so I</p> <p>15 do that every year.</p> <p>16 Q. Do you have or have you had immigration</p> <p>17 clients in the agricultural industry?</p> <p>18 A. Yes. Oh, yeah, on both the benefit side</p> <p>19 and the compliance side.</p> <p>20 Q. On the compliance side how much a part</p> <p>21 of that is your immigration practice?</p> <p>22 A. Specifically ag? I mean, I consider ag</p> <p>23 pretty broad-ranging, so basically the production</p> <p>24 of food I would consider to be somewhat ag. I'd</p> <p>25 say it's 20 to 30 percent of my immigration clients</p>	<p style="text-align: right;">Page 72</p> <p>1 that's probably accurate, that there's -- as in</p> <p>2 any -- as in any industry that relies on manual</p> <p>3 labor, and the same way -- I would say the same</p> <p>4 thing for construction, the construction industry.</p> <p>5 I think that there's a higher ratio of fake and</p> <p>6 fraudulent documents used in those industries.</p> <p>7 I would -- I would agree with that.</p> <p>8 Q. Okay.</p> <p>9 MR. KLINEFELDT: Okay to take a</p> <p>10 break now?</p> <p>11 THE WITNESS: Yep.</p> <p>12 MR. KLINEFELDT: I think we're --</p> <p>13 we've got about ten minutes left on the video.</p> <p>14 So can we go off record?</p> <p>15 THE VIDEOGRAPHER: We are going</p> <p>16 off the record. This is the end of Media Unit</p> <p>17 Number 1. The time is 10:21.</p> <p>18 (A recess was taken.)</p> <p>19 THE VIDEOGRAPHER: We are back on</p> <p>20 the record. This is the beginning of Media Unit</p> <p>21 Number 2. The time is 10:40.</p> <p>22 Q. Mr. Samson, before we talk about the</p> <p>23 specifics of this case, I want to ask you a</p> <p>24 little bit more about an employer's duties with</p> <p>25 respect to immigration law.</p>
<p style="text-align: right;">Page 71</p> <p>1 are somewhat connected to agriculture.</p> <p>2 Q. Is that somewhat of a specialty that</p> <p>3 people seek out or may advise you -- or ask you</p> <p>4 on because you have experience in the agriculture</p> <p>5 industry?</p> <p>6 A. No. It's more of a -- Agriculture is a</p> <p>7 critical infrastructure sector within Homeland</p> <p>8 Security's enforcement priorities. Okay? And</p> <p>9 so, you know, as you know, we have to network,</p> <p>10 and we have to market our services, so you -- I</p> <p>11 always try to focus on critical infrastructure</p> <p>12 sectors.</p> <p>13 So that would include -- the tech</p> <p>14 industry is big for me because tech relies on a</p> <p>15 lot of H-1B visas. The ag industry is big for</p> <p>16 me because there's lots of ag visas that are</p> <p>17 available, H -- H-2As and J-1 trainings. I do a</p> <p>18 lot of that stuff that, you know, basically -- so</p> <p>19 I kind of market to those critical infrastructure</p> <p>20 sectors.</p> <p>21 Q. Fair to say that the agriculture</p> <p>22 industry may have more immigration challenges</p> <p>23 than other industries?</p> <p>24 A. You know, I think -- I've seen various</p> <p>25 studies that would show that, and I think that</p>	<p style="text-align: right;">Page 73</p> <p>1 Generally, how would you describe</p> <p>2 an employer's duties with respect to immigration?</p> <p>3 A. When you say "immigration," I assume --</p> <p>4 I assume that you mean with respect to employee</p> <p>5 verification. That would be the -- an employer's</p> <p>6 responsibility is to comply with the federal</p> <p>7 requirement that they complete a Form I-9 for</p> <p>8 each employee that they hire at the time of hire</p> <p>9 and also to exercise reasonable diligence to</p> <p>10 confirm the identity and the work authorization</p> <p>11 of the employee.</p> <p>12 Q. And an employer generally has the duty</p> <p>13 to avoid hiring unauthorized workers. Is that</p> <p>14 fair to say?</p> <p>15 A. I would -- I would say the opposite. I</p> <p>16 think an employer generally has the duty to</p> <p>17 confirm that their employees are authorized for</p> <p>18 work. We're probably saying the same thing, but</p> <p>19 I would say it more affirmatively.</p> <p>20 Q. So you're familiar that the U.S.</p> <p>21 Citizenship and Immigration Services has a</p> <p>22 handbook for employers; right?</p> <p>23 A. Yes. It's called an M-274. It's</p> <p>24 published -- The versions of it change from time</p> <p>25 to time. It's updated and amended. They also</p>

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<p style="text-align: right;">Page 74</p> <p>1 regularly keep guidance online for employers. 2 They have -- They have a good website called I-9 3 Central that USCIS kind of manages, so they are 4 the resource for employers. 5 Q. And so the -- they have a handbook 6 available online for employers; is that right? 7 A. Yes. It's called an M-274. 8 Q. And that's there to help employers 9 comply with their legal requirements. Is that 10 fair? 11 A. That's -- That's correct. It contains 12 a lot of information for employers, including, 13 you know, we talked about the discrimination 14 aspect, including ways to avoid discriminatory 15 hiring. 16 There's a section on unfair 17 discrimination practices in that. There's a 18 list of the documents that are acceptable to 19 accept. So there's -- I believe it's like 13 20 chapters on it. It's a thick document, and it's 21 a good resource. I review it regularly. 22 Q. Okay. And I think this comports with 23 what you're saying. I'll just show you what I 24 marked as Exhibit 91, which I will tell you is 25 Section 1 of the handbook for employers.</p>	<p style="text-align: right;">Page 76</p> <p>1 that requirement. 2 Q. And so the purpose of the law is to get 3 employers to only hire individuals who may legally 4 work here; right? 5 A. Right, to create a disincentive for the 6 admission into the country without inspection or 7 parole. 8 Q. And then it says, look, there's -- to 9 comply with the law, employers must do, you 10 know, at least three things. One is verify the 11 identity and employment authorization of each 12 person they hire; right? That's one. Is that 13 fair to say? 14 A. Correct. And that's through the Form 15 I-9 process. 16 Q. And then -- 17 A. That's how they do that. 18 Q. And then the second one is to complete 19 and retain a Form I-9, Employment Eligibility 20 Verification, for each employee, and that's the 21 second requirement of the employer; right? 22 A. That is the -- It is listed as the 23 second bullet point, but that is actually the 24 way in which you comply with the first bullet 25 point, if that makes sense.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yeah. This is -- This is like the 2 first chapter out of the M-274. They now have 3 it completely available and broken down by -- by 4 section and chapter online. 5 Q. Yeah. So you can go on the website and 6 just get a particular section. 7 A. Exactly. 8 Q. Yeah. And that's exactly what I did 9 there. 10 And I just want to kind of affirm 11 a couple of things there. It looks like in the 12 second paragraph it says, you know, "Employment 13 is often the magnet that attracts people to 14 reside in the United States illegally. The 15 purpose of the employer sanctions law is to 16 remove this magnet by requiring employers to 17 hire only individuals who may legally work 18 here." 19 Is that a fair description of 20 employer duties? 21 A. That is a fair description of the 22 underlying basis for the Form I-9 requirement. 23 That was passed through a bipartisan effort in 24 1986. So that language actually comes out of 25 from 1986, which was the language that supported</p>	<p style="text-align: right;">Page 77</p> <p>1 The Form I-9 is the -- is the 2 animal that was created to help employers verify 3 the identity and employment authorization. They 4 have no duties beyond creating the -- the Form 5 I-9s unless they're put on notice of a change 6 during the course of employment, if that makes 7 sense. 8 Q. But what I'm driving at here is that 9 an employer doesn't just have a duty to fill 10 out a form. An employer has a duty not to hire 11 somebody who is unauthorized to work in the 12 United States. Isn't that fair to say? 13 A. An employer has the duty to complete a 14 Form I-9 using reasonable diligence to confirm 15 that the documents that are presented appear 16 genuine on their face, okay, and relate to the 17 individual in front of them. That's their duty, 18 and that's what they attest to in Section 2 of 19 the form. That's their -- That's their legal 20 obligation. Okay? There's no legal obligation 21 beyond that. 22 Now, employers -- if something 23 happens during the course of an employee's 24 employment that puts an employer on notice that 25 that person is no longer authorized for work or</p>

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<p style="text-align: right;">Page 78</p> <p>1 never was, then an employer has certain duties 2 at that point as well, but at the time of hire 3 the Form I-9 is the main legal obligation of the 4 employee -- of the employer. 5 Q. You could fill out the form and still 6 violate the law, though, couldn't you? 7 A. If you had actual knowledge that you 8 were falsifying the form. If you were falsifying 9 the form, yeah. I mean, obviously -- 10 Q. Right. 11 A. -- you could fill the form out and 12 falsify it and violate some other obligation, 13 yes. 14 Q. Right. Well, you could violate Section 15 1324a and still fill out the form, couldn't you? 16 A. If you had -- Yes, if you had actual 17 knowledge at that time that you completed the 18 form that the person was not authorized for 19 employment, yes. 20 Q. And so the obligation not to hire 21 unauthorized workers is bigger than just filling 22 out the I-9 form. Isn't that fair? 23 A. The obligation is -- is to act as a 24 reasonable employer would act. That's a bigger 25 obligation than just the Form I-9. I agree with</p>	<p style="text-align: right;">Page 80</p> <p>1 designed to do, is designed to be that level of 2 protection. 3 Now, some employers go above and 4 beyond and sign up for E-Verify to help them 5 with that process. Okay? That's not required 6 in Iowa. It's not required in many states. 7 But, in general, the Form I-9 is the obligation. 8 Obviously you have to complete it reasonably, 9 though. 10 Q. And so is it your testimony, then, when 11 the USCIS says in the handbook that the purpose 12 of the employer sanctions law is to remove the 13 magnet by requiring employers to hire only 14 individuals who may legally work here, that that 15 requirement is limited to just filling out the 16 I-9 form? 17 A. The I-9 form is the vehicle by which you 18 confirm the person is authorized for employment. 19 It's the vehicle you use. 20 Q. And so when the USCIS lists out as a 21 separate bullet point the obligation of an 22 employer to verify the identity and employment 23 authorization of each person they hire separate 24 from completing and retaining an I-9 form, 25 what's your understanding of that?</p>
<p style="text-align: right;">Page 79</p> <p>1 you there, but I'm pushing back on you a little 2 bit on your question because the -- the I-9 3 itself is the shield. It's what you -- It's what 4 employers use to comply with the requirement; but 5 they can't do so unreasonably in order to avoid, 6 you know, violating 1324 for knowing hire. 7 Q. Right. They can't just go through the 8 motions of filling out the form even though they 9 may know that they're hiring somebody who is 10 unauthorized? 11 A. The key part of your question there is 12 the knowledge aspect. They can't -- They -- If 13 they have knowledge, yeah, you're correct, 14 there's -- the obligation is larger. If they 15 don't have knowledge, then their job is to fill 16 out the form in a robotic fashion to avoid 17 discriminating against certain applicants. 18 So that's why when I -- I mean, 19 you have to understand that employers are in a 20 position where, if you look at the third bullet 21 point, "refrain from discriminating against 22 individuals on the basis of national origin or 23 citizenship," they're constantly balancing that 24 third bullet point against the first bullet 25 point, right, and that's what the Form I-9 is</p>	<p style="text-align: right;">Page 81</p> <p>1 A. The Form I-9 is the vehicle by which 2 they're verifying. Okay? So -- And that second 3 bullet point goes to another obligation, which 4 is, you can't complete the Form I-9 and then 5 throw it away. You have to complete it and 6 retain it during the scope -- during the -- so 7 that's the retention aspect. Okay? That's 8 why that second bullet point is laid out there. 9 Okay? 10 Q. Well, doesn't it -- 11 A. Because you see where it says "complete 12 and retain." I mean, there's -- that's a -- 13 that's -- that's a recordkeeping obligation. You 14 can't just complete it, throw it away, and then 15 tell the federal government you did it. You have 16 to retain and be able to produce it on three 17 business days' notice. 18 Q. Right. It says complete and retain the 19 I-9; correct? 20 A. For each employee. 21 Q. For each employee. 22 A. Within a certain retention period, yes. 23 Q. And that's the second bullet point; 24 right? 25 A. Right.</p>

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<p style="text-align: right;">Page 82</p> <p>1 Q. And so are you saying, then, that the 2 first bullet point is a nullity; that so long as 3 you're doing the second bullet point, that first 4 one doesn't matter? 5 A. No. I'm saying the first bullet point 6 is read in conjunction with the second bullet 7 point because the Form I-9 is the vehicle by 8 which the employer verifies the identity and 9 employment authorization. That's what they're 10 doing in Section 2 of the Form I-9. Under 11 penalty of perjury, they're attesting that they 12 verified identity and employment authorization. 13 Q. Okay. 14 A. There's no -- There's no separate 15 obligation, but I agree with you that the 16 employer cannot falsify the form or unreasonably 17 fill out the form and just, you know, meet their 18 obligation. They have to do it reasonably. And 19 that's what they're attesting to. 20 Q. Right. 21 A. Yeah. 22 Q. An employer can't knowingly hire somebody 23 who is unauthorized to work in the United States; 24 right? 25 A. Right. And a good example --</p>	<p style="text-align: right;">Page 84</p> <p>1 about that. What is E-Verify? 2 A. E-Verify is essentially a service that 3 an employer can utilize that is associated and I 4 believe provided by USCIS. The -- It's -- It's 5 a voluntary service. Some states require it. 6 The federal government requires it if you're 7 doing -- the use of it if you're doing federal 8 contracting work, but it's not -- states can 9 make their own decision as to whether they 10 require it. 11 And then essentially what happens 12 is, at the time of hire, the employee -- the 13 employer, excuse me, receives the documents from 14 the employees, and then they create a case 15 within E-Verify. They input the information on 16 the documents, and then E-Verify spits out -- 17 E-Verify runs a check against Homeland Security's 18 databases and spits out a result that tells you 19 whether employment is authorized or whether it 20 can't be confirmed that it's authorized. 21 If it's not confirmed that it's 22 authorized, if it's -- it's called a TNC. The 23 employee then has to take an affirmative action 24 to confirm and work with Homeland Security to 25 verify that. And so they're given like eight</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. And that's not just limited to filling 2 out an I-9 form; correct? 3 A. Well, a good example of that is the 4 employ -- the employer who provides the documents 5 to the employee and then turns around and fills 6 out the Form I-9 with the -- with the fraudulent 7 documents. 8 That's a perfect example of, well, 9 they filled out the Form I-9, but they also 10 knowingly hired an unauthorized person. That's 11 a -- That's -- That's your perfect example of 12 what you're saying. 13 Q. Right. And so I'll just ask you one 14 last time. Would you agree with me, then, that 15 an employer's duty is to verify the identity and 16 employment authorization of each person they 17 hire and that while filling out the I-9 form is 18 part of that, it's not limited to filling out an 19 I-9 form? 20 A. I agree. I agree that the overarching 21 obligation and reason for the Form I-9 requirement 22 is the employer's obligation to verify identity 23 and employment authorization. 24 Q. Okay. And so before we talk about I-9s, 25 you mentioned E-Verify, and I want to ask you</p>	<p style="text-align: right;">Page 85</p> <p>1 working business days to do that, and that's -- 2 so it's just a -- it's another resource that 3 employers can use to meet that first bullet 4 point obligation that we talked about. 5 Here's the issue with E-Verify. 6 Okay? E-Verify will not catch fraudulent cards. 7 Okay? So E-Verify is not a perfect system in 8 the sense that -- the best way I can explain 9 this is that there's a difference between a fake 10 document and a fraudulent document. 11 A fake document is one that has 12 been manipulated. Okay? E-Verify will catch 13 that; and that is if the Social Security number 14 doesn't match the name or, you know, things of 15 that nature. It's not going to catch if you're 16 using your brother's ID and the identity is all 17 legitimate and matches up to the date of birth 18 and the Social Security number. 19 So E-Verify is not a perfect system, 20 by any way. It will only catch fake cards, it 21 won't catch fraudulent cards, if that -- Does that 22 make sense? 23 Q. Is there any way that it matches pictures, 24 or is there any sort of identification it does of 25 your image?</p>

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<p style="text-align: right;">Page 86</p> <p>1 A. Not that I'm aware of. It's -- It's a 2 cross section. They may have added a digital -- 3 a digital photo part of it more recently, but 4 that's -- that would be a new addition. 5 You do -- You do need to retain 6 an identity document which bears a digital 7 image, and so there is a component to that, but 8 a lot of times if you look at an E-Verify 9 printout, that image locator is going to be 10 blank because there wasn't -- they didn't do 11 that part of it. 12 Q. And so let's start out, so do you know 13 what states do require E-Verify or how many? 14 A. You know, I haven't -- I haven't looked, 15 but I think 33 do not, so I would say 17 do. 16 You know, I'm familiar with this AOR, which 17 Nebraska and Iowa do not; but, yeah, so I think 18 it's 17 require it, 33 don't. I might have that 19 flip-flopped, though. 20 Q. And do you know why they require it? 21 A. Just as an extra layer of protection 22 against hiring unauthorized workers. 23 Q. And can you kind of walk us through 24 how an employer would go about utilizing it? 25 A. Yeah. I mean, I think I just did that;</p>	<p style="text-align: right;">Page 88</p> <p>1 So that's -- and then you go in 2 and -- basically the employer would go in and 3 resolve that case in the system, and then it 4 prints out a result. You typically would attach 5 that to your Form I-9. 6 So it's just a -- it's a system 7 that -- it's not a perfect system, but it's a -- 8 just an extra layer. It's like the -- Right now 9 it would be what I would call the gold standard 10 of if an employ -- if an employer is an E-Verify 11 employer, if ICE were to come in and do an 12 audit, ICE would consider that a positive factor 13 or a good -- a good-faith indicator. 14 Q. Would it be a best practice? 15 A. I don't think USCIS has went as far -- 16 as far as to say it's a best practice. I think, 17 again, where there's real value to it is in the 18 event of an audit, ICE considers it a good-faith 19 factor. 20 So, you know, I -- I mean, if -- 21 It's also burdensome to do it, and so a lot of 22 employers don't. I mean, you know, I would say 23 in Nebraska and Iowa you're probably less than 24 half of the employers that use E-Verify just 25 because it's burdensome. It's an extra part of</p>
<p style="text-align: right;">Page 87</p> <p>1 but, essentially, at the time of hire they get 2 the documents, right, that are -- that are also 3 listed in the Form I-9. They then go into a -- 4 It's a software-based system. 5 They go in, they input the 6 documents, and then the E-Verify system spits 7 out a result; and it either says a positive 8 result, employment authorized, or it says 9 tentative nonconfirmation, which says for 10 whatever reason we can't confirm authorization. 11 The employer then within the 12 system prints out what's called a Further Action 13 Notice, and they provide that to the employee, 14 and they say you can keep working here for the 15 next eight days, but you have to go to Homeland 16 Security and fix this or else, you know, we're -- 17 we can terminate you because we had -- and so it 18 gives the employee a period of time because 19 there can be -- there can be TNCs that are 20 issued not as a result of the -- of a fraudulent 21 or, I'm sorry, of a -- of a fake document. They 22 can be because, you know, the Social Security 23 number doesn't match perfectly to the name 24 because of the use of a middle initial. There's 25 just a lot of reasons a TNC can generate.</p>	<p style="text-align: right;">Page 89</p> <p>1 the onboarding process, and a lot of employers 2 don't want to do it. 3 Q. If you get a tentative nonconfirmation 4 and the employee doesn't do anything to resolve 5 it, as an employer are you required to terminate 6 them? 7 A. I mean, that's what I advise. It's -- 8 I don't know that it's a legal requirement under 9 the law, but you're required to resolve that 10 case within E-verify; and if you don't resolve 11 it, E-Verify will terminate your account, and 12 then you can't use E-Verify; but it's not 13 associated with an enforcement mechanism. 14 For example, like, E-Verify is a 15 completely separate system. If an employer 16 doesn't handle that correctly, it doesn't mean 17 ICE is going to come the next day and arrest -- 18 and charge you with knowing -- you know, knowing 19 hire or knowing continued employment; but, you 20 know, you're going to lose your ability to use 21 E-Verify, and that's -- and then when we talk 22 about that administrative subpoena, when ICE 23 comes in, that's going to be something ICE tries 24 to get, so if it's out there that you lost your 25 E-Verify account, ICE will use that as a -- as</p>

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<p style="text-align: right;">Page 90</p> <p>1 a -- as indicia of noncompliance. 2 Q. If you are accurately using E-Verify, 3 is there any protections under the law for that 4 action? In other words -- That's a bad question. 5 If ICE comes in and does a work 6 site enforcement action and that employer is 7 using E-Verify correctly, does that give the 8 employer any protection under the law? 9 A. Yes, in the sense that it's typically 10 used as a good-faith factor for purposes of fine 11 mitigation. It can also be used -- There's -- 12 I'm sure you've heard about the good-faith 13 defense to 1324. It would also be a factor that 14 would help an employer establish that good-faith 15 defense. It's not the factor, but it would be a 16 positive factor that would go a long way in 17 establishing that. 18 But, again, it's not a perfect 19 system, and there's a ton of case law out there 20 that talks about that not being a perfect system 21 and that you can't -- you know, the nonuse of 22 E-Verify does not equate to a lack of good faith. 23 And that's well-established. I mean, the nonuse -- 24 I want to make that clear. The nonuse of E-Verify 25 does not equate to lack of good faith.</p>	<p style="text-align: right;">Page 92</p> <p>1 system, getting information from to kind of 2 verify your employees' documents? 3 A. Yeah. I -- They are, to my knowledge -- 4 And, again, obviously I didn't create the system, 5 but to my knowledge it's running a cross-check with 6 a couple different federal agencies, including 7 Social Security and Homeland Security's databases. 8 So it's running -- it's running 9 like a data check against a couple different 10 other databases, but I don't know exactly which 11 federal agencies supply that information. And, 12 you know, data -- data in, data out. Data is 13 only as good as the data in, so that's why it's 14 not a perfect system as well. 15 Q. Is that why some employers don't use 16 E-Verify? I mean, in your experience, why do 17 some employers not use E-Verify? 18 A. I spoke about that a little bit. I 19 mean, I have clients that are very sophisticated, 20 hospitals, tech companies, that don't use E-Verify 21 because it's just a burdensome thing to do at the 22 time of onboarding. I mean, there's -- there's 23 very sophisticated clients out there that don't 24 E-Verify, enormous, enormous companies. 25 So it's -- it would be entirely</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. But if you've accurately used it, 2 you're getting a benefit as an employer; right? 3 A. It's twofold. Not only are you 4 operating at that gold standard of compliance in 5 hitting Bullet Point 1, but you're also -- it's 6 a shield to liability for knowing -- for knowing 7 hires. So it's a -- yeah, it's a positive -- it's 8 a positive factor. 9 Q. But if you use it and don't do so 10 accurately, for example, continue to employ 11 somebody who hasn't resolved a tentative 12 nonconfirmation or not resolved the tentative 13 nonconfirmation, then it sounds like you've kind 14 of bought yourself a problem. 15 A. That's -- To me, that's -- that's a bad 16 situation to be in, and there's a very -- there's 17 a memorandum of understanding when you -- when 18 you agree to use it, like you're -- there's -- 19 you're agreeing to use it correctly and things. 20 So not only is it a problem 21 because you're going to lose your access to that 22 account, but in the event of an ICE audit, that 23 would be something they would seek as part of 24 the administrative subpoena. 25 Q. And then what -- where is E-Verify, the</p>	<p style="text-align: right;">Page 93</p> <p>1 too speculative to say that an employer is not 2 using E-Verify because they're trying to -- 3 they're trying to circumvent the employment 4 verification laws. 5 There's just -- To say that for 6 one employer, you would have to say that for 7 thousands and thousands and thousands of 8 employers that do it for completely different 9 reasons, and so that's why it's entirely too 10 speculative to appoint one singular reason to 11 it. 12 Q. Do you think it's fair to say that some 13 employers don't use it because they want to avoid 14 getting negative results? 15 MR. BISS: Objection to form. 16 A. Yeah, I mean, I'll answer it to the 17 extent I can without speculating. 18 I think that it's probably 19 plausible that there are lots of employers in 20 the United States that choose not to do it 21 because it could create problems in their 22 ability to hire and recruit employees. You 23 know, it could be an impediment to their ability 24 to recruit and hire. 25 I don't -- I haven't experienced</p>

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<p style="text-align: right;">Page 94</p> <p>1 a lot of employers that purposely don't use it 2 for that reason; but, you know, it's probably 3 part of the analysis for, you know, many, many 4 employers. 5 Q. Right. Well, even as their lawyer, 6 they couldn't tell you that they purposefully 7 don't use it so they can hire unauthorized 8 workers; right? 9 A. Right. I mean, I would hope not, yeah. 10 Q. And so -- And you mentioned some clients 11 don't use it that are very sophisticated; right? 12 A. Yeah. I'm generally aware of a lot 13 of entities, sophisticated entities that have 14 sophisticated HR departments, that just don't 15 want to do it because of the burden of doing it 16 and having to close out cases and all that. 17 Q. Do they typically have a more 18 sophisticated system for making sure that the 19 I-9 forms are completed correctly and that the 20 people reviewing IDs know what they're looking 21 at? 22 A. As opposed to who? You're asking me to 23 make a comparison, and I don't know -- 24 Q. Well, you mentioned that they were 25 sophisticated clients, and I'm wondering what</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. You mentioned the burden of it. How 2 long does it take to use? 3 A. It's -- You know, it's a couple minutes. 4 I think there's some scanning involved now. So, 5 you know, it probably -- where it gets burdensome 6 is if you don't close cases out if they get 7 nonconfirmation because, like I said, you can 8 get a tentative nonconfirmation for a lot of 9 reasons, not just because the person is 10 unauthorized, so -- and then you start -- you 11 know, it's burdensome because then you start 12 getting -- if you don't close cases out -- and 13 there -- you know, there's entities that hire 14 hundreds of employees on a single day. 15 So if you're adding 10, 15 16 minutes to your onboarding process for each 17 employee, that bogs companies down. And you 18 have to do it within a certain time frame too. 19 So there's a lot of companies that don't do it 20 because of that. You're bogging -- You're 21 bogging their hiring process down. 22 Q. And so if you only hired like 20 employees 23 a year, it wouldn't be that burdensome? 24 A. It would be less burdensome for sure, I 25 mean, than -- than a -- obviously than a company</p>
<p style="text-align: right;">Page 95</p> <p>1 about their sophistication might cause them to 2 not use it. 3 A. I would say larger HR departments. 4 More sophisticated HR aren't onboarding, you 5 know, more help, essentially, you know, a 6 corporate structure. You know, it just -- 7 that's what -- you know, that's -- when I attach 8 the label of sophisticated, I just mean a better 9 corporate structure. 10 Q. And, typically, without naming clients, 11 what do they do to, for example, examine IDs and 12 verify identity? 13 A. Exactly what every employer should do, 14 review the documents, determine whether they 15 reasonably appear genuine on their face and 16 relate to the individual in front of them. I 17 would strongly advise any company to do any more 18 than that. I mean, you're just walking yourself 19 into a discrimination lawsuit if you're doing 20 more diligence. So they're just doing I-9. The 21 I-9 requirement is very simple and should be 22 methodically employed. 23 Q. And so but E-Verify is helpful; correct? 24 A. E-Verify is helpful to determine or to -- 25 or to confirm work authorization.</p>	<p style="text-align: right;">Page 97</p> <p>1 that hires 100 in a month or -- 2 Q. So it sounds like it takes a few 3 minutes to do the initial check; right? 4 A. I mean, yeah, I'd say five minutes, 5 five to ten minutes. 6 Q. And then how long does it take to 7 handle the tentative nonconfirmation if you get 8 it? 9 A. Well, then you would have to print 10 out -- I think it's called a Further Action 11 Notice, and you would have to then meet with the 12 employee. You'd have to read through it with 13 them. You know, you'd want to have it 14 interpreted if the employee doesn't speak 15 English. And then you would give them eight 16 working days. 17 So then on the eighth or ninth 18 day, you have to go back into the system and 19 close the case out or put some other notes in 20 there if there's some reason more time is 21 needed. So it's just a system that you have to 22 manipulate. 23 Q. And if it comes back as a positive 24 result, is there any more you have to do as an 25 employer?</p>

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<p style="text-align: right;">Page 98</p> <p>1 A. No, other than print out the result and 2 attach it to your I-9. I mean, I always advise 3 clients to attach it to their I-9s. 4 Q. Is it free to use? 5 A. Yes. 6 Q. Do you have clients that use it? 7 A. Yes, I do. 8 Q. Have you had a lot of clients that used 9 it? 10 A. I would say, I mean, if you're talking 11 about -- I mean, that's really hard to say, but 12 I would say probably about 50 percent use it and 13 50 percent don't. 14 Q. In your -- 15 A. In all different industries. I don't -- 16 It's not really tied -- I mean, I have -- I have 17 clients, and immigration is filtering through 18 about every industry right now. 19 Q. And in your experience how accurate is 20 it? 21 A. Like I said, there's errors but it's 22 generally pretty accurate. It's not going to -- 23 If your -- If your goal in using it is to help 24 deter the use of fraudulent documents or fake 25 documents, then I think it's pretty -- pretty</p>	<p style="text-align: right;">Page 100</p> <p>1 to the point where the employee can continue 2 their employment. 90 percent of the time the 3 employee will self-terminate, will voluntarily 4 leave their employ and not come back the next 5 day. 6 When the employer has that 7 conversation with the employee and says you've 8 got eight working days to resolve this, in my 9 experience, in representing a lot of companies, 10 you know, those employees just don't come back, 11 you know, because it's a deterrent. They don't 12 have an explanation for it other than the fact 13 they presented a fake document. So, yeah, I 14 would say I'd place it at 10 percent that are 15 successfully resolved. 16 Q. So how are those 10 percent successfully 17 resolved, in your experience? 18 A. Usually Social Security or Homeland 19 Security will confirm that the person is 20 authorized. Social Security will not do that, 21 but Homeland Security -- So the Further Action 22 Notice that you give the employee has contact 23 information on it, so they reach out to Homeland 24 Security. Homeland Security will -- If it's a 25 glitch on their end, they'll send some sort of</p>
<p style="text-align: right;">Page 99</p> <p>1 helpful in that regard. I think it's pretty 2 effective, not necessarily because of the 3 system, but because when you use E-Verify, they 4 send you, like, stickers and things to put on 5 your window. Right? 6 So if you're -- in some of these 7 industries that are dealing with fraudulent 8 and fake documents, you're deterring a lot of 9 people from even applying. Okay? Because, you 10 know, usually if you walk into an industry 11 warehouse, it will say right on the door, we're 12 an E-Verify employer. 13 So there -- You know, I think 14 it's somewhat effective as a deterrent to that. 15 I think it's effective in the -- The system is 16 effective, but it's far from perfect. And, you 17 know, again, there's lots of employers that 18 don't use it. 19 Q. In your experience, how often do 20 employers get tentative nonconfirmations that 21 are then resolved successfully; in other words, 22 that it would be kind of a negative -- a false 23 negative? 24 A. I mean, I would say less than -- less 25 than 10 percent of the time are those resolved</p>	<p style="text-align: right;">Page 101</p> <p>1 communication, provide some sort of communication 2 to the employee that says no, and then you can 3 go in -- and then the employee presents that to 4 the employer, and then it's resolved. I think 5 the functionality has gotten better, too, more 6 recently. I think Homeland Security can even 7 resolve them themselves sometimes. 8 Q. How often is it a problem with Homeland 9 Security versus Social Security? 10 A. Well, Social Security -- Social Security 11 doesn't have near -- near the amount of data that 12 Homeland Security would have. That would be, for 13 example, immigration statuses. 14 You know, they're -- So Social 15 Security can do one thing. They can match a 16 name to a Social Security number. Homeland 17 Security has broader tools that would allow it 18 to confirm that -- that Clete Samson is a lawful 19 permanent resident, you know, that was issued a 20 green card, legitimately issued a green card. 21 So they have broader tools than Social Security 22 has. 23 Q. How often, in your experience, do 24 people get tentative nonconfirmations based on 25 information from Social Security saying that the</p>

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<p style="text-align: right;">Page 102</p> <p>1 name doesn't match the Social Security number?</p> <p>2 A. It's typically more so -- Social</p> <p>3 Security Administration's data is typically --</p> <p>4 well, kind of has a reputation for being</p> <p>5 nonaccurate or overly -- overly -- you see this</p> <p>6 with no-match letters. You see it a lot with</p> <p>7 employer correction notices, which you may be</p> <p>8 familiar with.</p> <p>9 But their -- their data is so</p> <p>10 confined that, like, if a middle initial is off</p> <p>11 or missing, it won't match it. It will show it</p> <p>12 as a no match. So they have -- Social Security</p> <p>13 has more of a reputation for incorrectly</p> <p>14 generating a no match, more so than Homeland</p> <p>15 Security does.</p> <p>16 Q. And if a Social Security card is valid</p> <p>17 and the employer puts on E-Verify the name</p> <p>18 exactly as it is on the Social Security card</p> <p>19 and the number exactly as it is on the Social</p> <p>20 Security card, then Social Security would not</p> <p>21 come back with a no match; correct?</p> <p>22 A. I mean, I can't -- I can't answer that</p> <p>23 because I've seen -- it kind of depends on where</p> <p>24 the -- it depends on the Social Security's</p> <p>25 system and if -- if a middle initial was used</p>	<p style="text-align: right;">Page 104</p> <p>1 no-match letters. Okay?</p> <p>2 So then there was a bunch of</p> <p>3 litigation over -- over this issue with -- with</p> <p>4 Social Security, and then they came up what was</p> <p>5 called a safe harbor provision.</p> <p>6 So they said if an employer</p> <p>7 does XYZ when they get a no-match letter, then</p> <p>8 they're -- then they -- they cannot be deemed</p> <p>9 to have knowingly continued to employ an</p> <p>10 unauthorized worker. Well, then that, that safe</p> <p>11 harbor, got challenged; and eventually they wiped</p> <p>12 the whole thing off.</p> <p>13 Then in 2019 a much more</p> <p>14 aggressive administration on the enforcement</p> <p>15 side was in office, and President Trump's</p> <p>16 administration relaunched employer correction</p> <p>17 notices in 2019, after like a ten-year hiatus</p> <p>18 from doing it.</p> <p>19 And immediately it was challenged</p> <p>20 by a ton of employers because they got 200,</p> <p>21 you know, employer correction notices that had</p> <p>22 generated -- that were generated as a result of</p> <p>23 errors.</p> <p>24 Now, I don't know what percentage</p> <p>25 of those were accurate no matches versus -- but</p>
<p style="text-align: right;">Page 103</p> <p>1 instead of a full name, middle name.</p> <p>2 I mean, you see it in the W-2 C's;</p> <p>3 but, you know, in general, we're talking about a</p> <p>4 10 -- I would say a 10 percent margin of error.</p> <p>5 It may be a little bit higher than that.</p> <p>6 Q. But have you ever seen a tentative</p> <p>7 nonconfirmation or a no-match notice go to an</p> <p>8 employer where the employer accurately put in</p> <p>9 both the Social Security number and the person's</p> <p>10 name as it appears on the Social Security card?</p> <p>11 A. Yes, I've seen that.</p> <p>12 Q. How often?</p> <p>13 A. I mean, it's hard to tell because --</p> <p>14 but it happens, and it's -- a lot of the reason</p> <p>15 is the middle initial component is problematic.</p> <p>16 Okay?</p> <p>17 And that's why there is -- there is</p> <p>18 a whole host of articles, data on how inaccurate</p> <p>19 Social Security's no-match letters are, to the</p> <p>20 point where there was about a ten-year period of</p> <p>21 time where they stopped issuing no-match letters.</p> <p>22 Okay?</p> <p>23 It was subject to a ton of</p> <p>24 litigation in the '90s because employers were</p> <p>25 being fined for not properly responding to</p>	<p style="text-align: right;">Page 105</p> <p>1 it's higher than you would -- it's higher than</p> <p>2 you would think, and that's why there's this</p> <p>3 whole body of case law in that no-match area.</p> <p>4 And, in fact, Social Security has</p> <p>5 even had to on its website openly say a mismatch --</p> <p>6 a no-match letter or a -- does not equate to</p> <p>7 constructive knowledge. They've had to openly</p> <p>8 say that as a result of the litigation because</p> <p>9 there's just no accuracy, so it's --</p> <p>10 Q. There's no accuracy?</p> <p>11 A. Well, I shouldn't say there's no accuracy,</p> <p>12 but what I will say is that there's -- there is</p> <p>13 accuracy dilemmas that have caused them to be very</p> <p>14 careful because employers -- and it even says</p> <p>15 employers may not take adverse action based solely</p> <p>16 on an employer correction notice.</p> <p>17 Q. And I'm going to -- I'm going to ask</p> <p>18 you about the Social Security no-match letters</p> <p>19 here later on; but before we go any further, I</p> <p>20 just want to make sure that I don't screw up</p> <p>21 terminology here.</p> <p>22 And I know oftentimes we use the</p> <p>23 term "unauthorized worker" or "undocumented</p> <p>24 worker," and what I'm trying to convey is</p> <p>25 somebody who is not authorized to work in the</p>

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<p style="text-align: right;">Page 106</p> <p>1 United States legally. Is that fair? I mean, 2 is that -- 3 A. So -- 4 Q. Am I getting the terminology right 5 there? 6 A. I mean, you have to be somewhat careful 7 because there are people who are legally in the 8 country that do not have authorization to work, 9 so if you're referring to somebody -- if you're 10 correlating an unauthorized worker with an 11 illegal or a legal person, that's not a direct 12 correlation because there's -- a perfect example 13 is an H visa. 14 A dependent can come over and 15 live with their H worker, their H visa worker, 16 but that person cannot get work authorization. 17 Okay? So they're here legally, and they're H-4 18 status, but they can't -- they can't work in 19 that status, so that's why it's not a direct 20 correlation, but I mean -- 21 Q. In other words, somebody could be here 22 legally in the United States, but they may not 23 be legally authorized to work -- 24 A. To work -- 25 Q. -- in the United States; correct?</p>	<p style="text-align: right;">Page 108</p> <p>1 A. It is. 2 Q. Right. 3 A. And there's -- there's about 53 different 4 statuses you can get work authorization through, 5 noncitizen statuses, so you cannot -- and this 6 is what I tell employers because my big concern 7 for employers is discrimination. You cannot 8 look at an individual and tell whether they're 9 authorized for work. 10 Q. Right. 11 A. Okay. You just can't, not based on 12 language, not based on education, not based on 13 anything. 14 Q. And so when I'm talking -- when I use the 15 term "unauthorized to work in the United States" 16 or "undocumented worker," I'm just trying to convey 17 that they're not legally authorized to work in the 18 United States. Is that fair? 19 A. For purposes of today, yes. 20 Q. For purposes of today. And so -- 21 A. And that's how I'll take it to be 22 understood. 23 Q. Yeah. And if it becomes -- if there's 24 an important distinction, please let me know. 25 Okay?</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Exactly. 2 Q. But if you're illegally in the United 3 States, then there's no way you could be legally 4 authorized to work in the United States; right? 5 A. And that's -- that's -- no, that's 6 not -- not accurate. So in the way that term is 7 used, that's not completely accurate because 8 there are statuses where you are illegally in 9 the United States, but you can get a work card 10 while you're -- while certain applications are 11 pending. 12 For example, there's something 13 called a U visa. A U visa is somebody who is 14 available -- somebody who has entered illegally, 15 so they're illegally in the United States, but 16 they've been the victim of a crime at the hands 17 of a United States citizen or at the actions 18 of a United States citizen. They file a U visa. 19 They can now -- They can now get work authorization. 20 So that's why, you know, to 21 immigration lawyers it's like nails on a 22 chalkboard when you hear people say things like 23 undocumented, unauthorized, and illegal all in 24 the same breath, so it's -- 25 Q. It's more complicated than that.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I will. 2 Q. So let's talk about I-9 requirements. 3 An employer must complete an I-9 form for every 4 employee; right? 5 A. Correct. 6 Q. Okay. And so a Form I-9 is available 7 online; right? 8 A. Online is the best way to get it because 9 that's the most accurate version. The version 10 changes about every 18 months. 11 Q. And then there's also instructions for 12 Form I-9 employment eligibility verification 13 that's available online too; is that right? 14 A. That's correct. 15 Q. Okay. Let me show you what I've marked 16 as Exhibits 89 and 90, which we just downloaded 17 off the Internet. Take your time to see if that 18 looks right and let me know when you're able. 19 A. These are -- These are accurate. This 20 is the current version. 21 Q. Of both the form and the instructions? 22 A. Yes. And I know that based on the 23 "Expires" date up at the top right corner. 24 Q. Okay. And so, you know, you can -- I 25 know you're probably extremely familiar with</p>

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<p style="text-align: right;">Page 110</p> <p>1 them, but you can just have them in front of you 2 throughout the deposition. Okay? 3 So I guess the first thing that -- 4 I want to kind of walk through what employers' 5 obligations are with respect to completing these 6 forms. Okay? 7 A. Okay. 8 Q. And I guess the first obligation would 9 probably be that you have the current form. Is 10 that fair? 11 A. Yeah. And that would be, from a 12 compliance perspective, you want to make sure 13 you've got the right form at the time of hire. 14 Q. Okay. 15 A. But that's a technical violation, by 16 the way. Using the wrong version of the form is 17 a technical violation. 18 Q. And so let's start with Section 1, and 19 can you walk me through what an -- what's supposed 20 to happen in Section 1? 21 A. So Section 1 is the part of the document 22 that the employee fills out or uses a preparer to 23 fill out. It needs to be done on or before the 24 first date of employment, and -- Would you like 25 me to keep going?</p>	<p style="text-align: right;">Page 112</p> <p>1 provides for imprisonment and/or fines for false 2 statements or use of false documents in 3 connection with the completion of this form"; is 4 that right? 5 A. That's correct. That's what it says. 6 Q. And that's because it's actually a felony 7 under federal law to make false statements or use 8 false documents in connection with this form; is 9 that correct? 10 A. That's correct. And this is the -- this 11 is the employee who is attesting to this. 12 Q. And why -- why -- you know, I'm asking 13 you to kind of put your government hat on again. 14 Why is that important to have on there? 15 A. It establishes knowledge on the part of 16 the employee. It establishes an awareness that 17 the employee knows what they're doing when they 18 make this attestation because, you know, a lot of 19 times the Department of Justice will prosecute 20 individuals for making false claims to U.S. 21 citizenship by virtue of this form, and one of 22 the defenses to that is that they didn't know 23 what they were signing, so that's why they put 24 that in bold. 25 Q. And so the employee has to swear under</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. Yeah. So let's -- So it's got to be 2 done the first date of employment; correct? 3 A. Or before they start. It needs to be 4 done on or before their first day. 5 Q. And the employee is the one filling out 6 Section 1; is that correct? 7 A. That's correct, or they can have a 8 preparer fill out Section 1. If they have a 9 preparer do it, then they need to fill -- the 10 preparer needs to complete the box at the 11 bottom. 12 Q. And so the very first part, the 13 employer -- employee, excuse me, is filling out 14 kind of biographical information, name, address, 15 things like that; right? 16 A. That's correct. 17 Q. And then -- And are they required to 18 put a Social Security number? 19 A. No, but that's a -- that's an optional. 20 They can -- If the employer E-Verifies, that's 21 typically required, but it's not -- it's not 22 required. 23 Q. And right under that first box it says, 24 "I am aware that federal law prohibits" -- I'm 25 sorry. It says, "I am aware that federal law</p>	<p style="text-align: right;">Page 113</p> <p>1 the penalty of a felony offense that the 2 information they're providing and the documents 3 they're providing is accurate; right? 4 A. That's correct. 5 Q. And then below that it says, "I attest, 6 under penalty of perjury, that I am checking one 7 of the following boxes," or "that I am," and 8 then in parentheses it says "checking one of the 9 following boxes"; is that right? 10 A. That's accurate. They have four choices. 11 Q. And what is the purpose of that statement? 12 A. To establish work authorization, they 13 would have to fall within one of those four boxes. 14 Q. And, again, that would be also a felony. 15 It would be perjury to knowingly check the 16 incorrect box; right? 17 A. On the part of the employee, yes. 18 Q. Correct. Right. 19 A. Yes. 20 Q. We're just talking about the employee. 21 And so an employee would be 22 committing a felony if that employee knowingly 23 checked the wrong box. Is that accurate? 24 A. Yeah. The most common -- That's 25 accurate. The most common example you see are</p>

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<p style="text-align: right;">Page 114</p> <p>1 employees that falsely attest to being citizens 2 of the United States. 3 Q. Right. And that's even a separate law, 4 right, that it's -- 5 A. Right. 6 Q. It's against federal law. In fact, 7 it's a felony to falsely claim United States 8 citizenship on a form such as this; right? 9 A. For an employee to do so, yes. 10 Q. For an employee to do so, is that 11 right, and so -- but it would also be a felony 12 to knowingly falsely claim to be a noncitizen 13 national of the United States; is that right? 14 A. No, I don't think that's accurate, 15 because I think that the law itself requires you 16 to falsely attest to be a U.S. citizen. 17 If -- For example, if under what 18 I believe is 42.408, is the part of the criminal 19 code on this, I think the only prosecutions I've 20 seen are the false attestation to citizenship 21 because, for example, if you -- if you check 4, 22 "alien authorized to work," and you're actually 23 a lawful permanent resident -- 24 MR. BISS: Hold on one sec. Hold 25 on one sec. Nick, can you hear me?</p>	<p style="text-align: right;">Page 116</p> <p>1 but it can be a -- it can be a felony, and it 2 would go -- it would be the same thing for a 3 perjury charge, depending on if it was brought 4 as a misdemeanor or a felony. It could 5 potentially -- 6 Q. Right, but -- 7 A. -- be a felony. 8 Q. You're talking about a matter of 9 discretion for a prosecutor. What I'm saying 10 is, is that under law, whether it's prosecuted 11 or not, it is a felony to falsely claim that you 12 are a United States citizen on a form such as a 13 Form I-9; is that right? 14 A. That's correct. 15 Q. And separate and apart from claiming 16 that you are a United States citizen, it is 17 also a violation of federal law, in fact, it's 18 a felony, to claim that you are a noncitizen 19 national of the United States; is that correct? 20 A. I'm just going to say potentially 21 that's correct. It's -- If you're saying that 22 that's going to be a felony under a perjury 23 basis, potentially, yes, it could be. It could 24 be a felony for -- 25 Q. Well, it --</p>
<p style="text-align: right;">Page 115</p> <p>1 MR. KLINEFELDT: Yes. 2 MR. BISS: So my video just went 3 blank for about four or five seconds. I wasn't 4 able to hear the witness for about four or five 5 seconds. I just want to let you guys know that, 6 put that on the record. 7 I don't know if I missed anything 8 important or I didn't, if I missed a question 9 that you asked, but everything froze up there 10 for about four or five seconds, so I just want 11 to let you know. You may want to reask your 12 last question. 13 MR. KLINEFELDT: Okay. Yeah, 14 absolutely. Happy to do that. 15 Q. And so what we were talking about is 16 kind of the second statement under that first 17 box where it says, "I attest, under penalty of 18 perjury, that I am," and then in parentheses it 19 says "check one of the following boxes"; right? 20 A. Correct. 21 Q. And we've established that falsely 22 claiming that you're a United States citizen is 23 a felony; right? 24 A. Correct. It can be a misdemeanor as 25 well, but it depends on what it's charged as,</p>	<p style="text-align: right;">Page 117</p> <p>1 A. -- knowingly checking one of the other 2 three boxes incorrectly. That could be subject 3 to penalty of perjury. 4 Q. Right. And so that's what the 5 statement says; right? Hey, look, you're 6 subject to the penalty of perjury for checking -- 7 falsely -- knowingly falsely checking any one of 8 these four boxes; right? 9 A. That's what the statement says, yes. 10 Q. And that would be a violation of 18 11 U.S.C. 1001. Fair? 12 A. Correct. 13 Q. And so, likewise, it would be a violation 14 to falsely claim that you're a lawful permanent 15 resident; right? 16 A. Correct. 17 Q. That would be perjury; is that right? 18 A. That is -- That's correct. 19 Q. And then -- And what -- Based on your 20 government experience, what -- why is that 21 important to have that attestation on there? 22 A. Well, it's important for two reasons. 23 One, it's important to the form because it's 24 another element of establishing work authorization 25 because you're only going to be authorized to</p>

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<p style="text-align: right;">Page 118</p> <p>1 work in the United States if you can accurately 2 attest to one of those four boxes. 3 The second part is, it's important 4 that -- the government often uses this form for 5 prosecutions, so they use that attestation as 6 evidence in criminal cases. 7 Q. It's important to the government that 8 you are accurately identifying your status. Is 9 that fair to say? 10 A. Yes. 11 Q. And so you have to check one of those 12 four boxes if you're the employee; right? 13 A. That's correct. If you fail to do so, 14 it would be considered a substantive paperwork 15 violation. 16 Q. Okay. And if you were, for example, 17 not authorized to work in the United States, 18 then you wouldn't be able to accurately check 19 one of those boxes; right? 20 A. Right. You would not have an option. 21 Q. And so a citizen of the United States, 22 fair to say people generally know if they're a 23 citizen or not? 24 MR. BISS: Object to the form. 25 A. Yeah, I'm going to say I can't speculate.</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Yeah, and it -- Yeah, it is the American 2 Samoa and then the Trust Territory of the Pacific 3 Islands. So, yeah, it's a -- there's very few -- 4 very few noncitizen nationals in the United 5 States. 6 Q. And so that's -- And so if you were an 7 employer and somebody checked that and it said 8 "See instructions," you could go to page 3 of 9 the instructions and find the definition of a 10 noncitizen national of the United States; is 11 that correct? 12 A. That's correct, but the employee is the 13 one making the attestation; but, yeah, the employer 14 could look as well. 15 Q. And the instructions identify noncitizen 16 national of the United States in a single sentence; 17 is that right? 18 A. Yes. 19 Q. And it says, "An individual born in 20 American Samoa, certain former citizens of the 21 former Trust Territory of the Pacific Islands, 22 and certain children of noncitizen nationals 23 born abroad"; is that right? 24 A. That's correct. That's how that's 25 defined.</p>
<p style="text-align: right;">Page 119</p> <p>1 Actually, in my experience, a lot of people don't 2 know what their status is. They don't. They don't 3 understand the difference between the various 4 statuses. 5 I think U.S.-born individuals will 6 know if they're a citizen, but those that have 7 immigrated to that status through naturalization 8 often don't understand the difference between 9 being a green card holder and a citizen, so -- 10 but, in general, I'll agree with you to the extent 11 you're talking about U.S.-born individuals. 12 Q. Now, let me ask you about the second 13 box. What is a noncitizen national of the 14 United States? 15 A. It's a very unique status that relates 16 to certain treaties and islands, where they have 17 basically all of the rights of a citizen, you 18 know, minus a few, such as the right to vote. 19 It's a very -- You know, I'd have 20 to look. I'd have to go back and look, but the 21 Samoan Islands would probably qualify under that. 22 There's a -- It's in the instruction, too, but -- 23 Q. Yeah. So that's what I was going to 24 direct you to. So, actually, that's the only 25 box where it says "See instructions"; right?</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. And so you'd either have to be born an 2 American Samoan or a Pacific Islander or a children 3 of somebody who was -- child of somebody who was 4 to qualify, generally? 5 A. To accurately check that box, yes. I 6 will just tell you, in my experience of looking 7 at thousands and thousands of these I-9s, that 8 box is often checked by noncitizens that are 9 authorized to work because they see the 10 "noncitizen" and they check it and they're 11 not -- you know, they're not -- so that box is 12 flagged very often by employees. It's a very 13 typical mistake that's made by employees. 14 Q. It's a -- And if you were advising an 15 employer and they said, hey, Mr. Samson, I've 16 got a person here who just checked the box 17 noncitizen national of the United States, and so 18 I go to my instructions, page 3, and it spells 19 out who is a noncitizen national of the United 20 States, and can I ask this person if they are 21 from American Samoa or the Pacific Islands? 22 A. I do not typically advise employers to 23 try to control what the employee checks in 24 Section 1 because to do so -- if you look at the 25 top of the Form I-9, this Antidiscrimination</p>

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<p style="text-align: right;">Page 122</p> <p>1 Notice, if you start having these conversations --</p> <p>2 Section 1 is the employee's information. It's</p> <p>3 their attestation.</p> <p>4 And here's why. Okay? If the</p> <p>5 employer starts trying to control the box that</p> <p>6 the employee checks, it no longer becomes the</p> <p>7 employee's attestation, okay, and it becomes the</p> <p>8 employer's attestation, and it's problematic,</p> <p>9 and it -- and it is -- and so I don't typically</p> <p>10 advise clients to assist because then -- you</p> <p>11 know, then you get into a situation where now</p> <p>12 are you going to have them fill out the preparer</p> <p>13 box?</p> <p>14 Q. No. And maybe I asked a bad question,</p> <p>15 but what I'm asking is not assisting them in</p> <p>16 filling out the form. I'm saying they've already</p> <p>17 filled out the form; and now I'm calling you, as</p> <p>18 my lawyer, saying they've already filled out the</p> <p>19 form, but I understand I have a legal duty not</p> <p>20 to hire unauthorized workers, and I don't think</p> <p>21 this person is a noncitizen national of the</p> <p>22 United States because, boy, it seems like that</p> <p>23 would be very few people, that would be a</p> <p>24 rarity, can I ask them if they're -- they have</p> <p>25 any connection to America Samoa or the Pacific</p>	<p style="text-align: right;">Page 124</p> <p>1 discriminatory act.</p> <p>2 So what I'm saying is each case,</p> <p>3 if you have other indicia that you know the</p> <p>4 person is from Mexico because of something that</p> <p>5 substantiates that, you know, then -- then,</p> <p>6 yeah, that scale starts to tip toward we need to</p> <p>7 do some more diligence.</p> <p>8 Q. And in the years that you've done</p> <p>9 immigration law, have you ever seen an I-9 where</p> <p>10 somebody accurately checked the noncitizen</p> <p>11 national of the United States box?</p> <p>12 A. Yes, I have. I have. We used to see</p> <p>13 them quite a bit in certain regions.</p> <p>14 Q. What regions were those?</p> <p>15 A. Like, California. California had --</p> <p>16 California employers actually have quite a few</p> <p>17 noncitizen nationals, because I think probably</p> <p>18 just geographically located. So, yeah, I mean,</p> <p>19 I -- I always get a little excited when I see</p> <p>20 it, you know, because it's -- it is a little bit</p> <p>21 rare.</p> <p>22 Q. I also noticed about the noncitizen</p> <p>23 national box is that it seems to be the only</p> <p>24 status you can check, other than claiming you're</p> <p>25 a United States citizen, where you don't have to</p>
<p style="text-align: right;">Page 123</p> <p>1 Islands?</p> <p>2 A. An employer, I think, could do that and</p> <p>3 be okay. They could exercise that level of</p> <p>4 diligence. I don't know that that would be</p> <p>5 required. In fact, I don't think that that</p> <p>6 level of diligence is required. But if I had a</p> <p>7 client call me and say -- and there's other</p> <p>8 indicia, you know, that wouldn't match up with</p> <p>9 that attestation, sure, I would tell that</p> <p>10 employer you have the right to do that. The law</p> <p>11 does not require that, though.</p> <p>12 Q. What if you know they're from Mexico?</p> <p>13 A. If the employer knew they were from</p> <p>14 Mexico and they --</p> <p>15 Q. Yeah.</p> <p>16 A. -- checked that box, then, I mean,</p> <p>17 you're talking about indicia. Right? You're</p> <p>18 talking about fact-based, so you're talking</p> <p>19 about a variety of facts that start to tip the</p> <p>20 scale toward knowledge, but it's -- it's a</p> <p>21 fact-based inquiry on each time because you</p> <p>22 can't just generally say, hold up, they checked</p> <p>23 noncitizen, I'm going to do an extra level of</p> <p>24 scrutiny here because to do that is now you're</p> <p>25 discriminating. Right? You're committing a</p>	<p style="text-align: right;">Page 125</p> <p>1 enter another number. Is that right?</p> <p>2 A. In the sense of -- Yeah. I mean, yeah,</p> <p>3 right. That would be accurate. There's not a</p> <p>4 requirement for you to enter like an alien</p> <p>5 registration number or a -- or a lawful permanent</p> <p>6 resident number or, you know, anything like that,</p> <p>7 that's correct.</p> <p>8 Q. And so isn't it possible that if</p> <p>9 somebody who was not authorized to work in the</p> <p>10 United States is looking at this box, they could</p> <p>11 easily make the determination that, look, I know</p> <p>12 I'm not a citizen, but Box 2 is the only one I</p> <p>13 can check where I don't have to provide an A</p> <p>14 number or some other number, and so I'm going to</p> <p>15 check that one? Have you seen that occur?</p> <p>16 MR. BISS: Object to the form.</p> <p>17 A. Yeah, it's hard to speak for -- for</p> <p>18 what would be in the employee's mind, so I</p> <p>19 wouldn't be able to connect that, but I can tell</p> <p>20 you that what you're talking about is why there's</p> <p>21 a Section 2, okay, and why the top of the form</p> <p>22 says, "Employers cannot specify which documents</p> <p>23 an employee may present to establish employment</p> <p>24 authorization and identity."</p> <p>25 So someone can check noncitizen</p>

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<p style="text-align: right;">Page 126</p> <p>1 national of the United States and then present 2 an ID card and a Social Security card that 3 appears reasonably genuine on its face and 4 they've met -- they've complied with the I-9 5 requirement. 6 So, I mean, I understand your 7 point, that you think anybody who checks Box 8 Number 2, that it's some sort of a red flag, but 9 employers cannot discriminate on the basis of 10 what box is checked. 11 Q. But they have an obligation to make sure 12 it's accurate; right? 13 A. Reasonably. Their obligation appears in 14 Section 2 under their attestation, their penalty 15 of perjury. 16 Q. I mean, doesn't an employer have some 17 duty to make sure that that box is not inaccurately 18 checked? 19 A. No. 20 Q. Even if presented with information that 21 indicates that it may not be accurate? 22 A. Perhaps then, but it's a fact-based 23 inquiry. Perhaps then, but on its face at the 24 time of hire, if the employee checks it, the 25 employer's obligation is to confirm that it's --</p>	<p style="text-align: right;">Page 128</p> <p>1 reasonable employer would be put on notice and 2 make that connection, then maybe. 3 But, again, I can't -- I'm pretty 4 familiar with all the regulatory decisions; and 5 I just cannot, sitting here today, think of a 6 case where an ALJ said the fact that someone 7 checked that box and there was some other 8 indicia, that that established some sort of 9 knowledge on the part of the employer. I just -- 10 I have not seen that. 11 Q. Right. And let's put aside for now 12 whether any one single factor by itself 13 establishes a knowingly hire violation. Okay? 14 All I'm asking is, is it a clue? Could it be a 15 factor? 16 A. I'll use the word "indicia." 17 Q. Okay. 18 A. Perhaps it could be, in combination 19 with other indicia. 20 Q. And it would be, in fact, a substantive 21 violation if the employee presents a document for 22 Section 2 that contradicts the status checked in 23 Section 1; correct? 24 A. Probably that would be a technical. So 25 what you're saying is if the employee presents a</p>
<p style="text-align: right;">Page 127</p> <p>1 that it's completed. Okay? It's not -- It's -- 2 You know, I have not seen any case law or 3 regulatory law that says an employer has the 4 duty to control what the employee attests to. 5 I have not -- I've just not seen 6 or I haven't even seen law or regulatory law 7 that says -- or regulatory decisions that say 8 the checking of the noncitizen national in and 9 of itself is somehow a red flag. 10 Now, if there's other indicia 11 that is, you know, corroborating evidence, like 12 the employer, you know, has some knowledge that 13 the person is actually from Mexico or Guatemala 14 or wherever, then you're in a different realm. 15 Q. And so -- but are you telling me that 16 when you were with the government, that the fact 17 that somebody is checking noncitizen national of 18 the United States might not be a clue? 19 A. No. I mean, it may be a clue, but it's 20 not a piece of evidence that could be used to 21 support a knowing -- a knowing hire violation. 22 Q. Under any circumstances? 23 A. No. It's not in and of itself, the 24 checking of the box, of that box is not in and 25 of itself, but if there's other indicia that a</p>	<p style="text-align: right;">Page 129</p> <p>1 lawful permanent resident card, okay, that tells 2 you the employee is a lawful permanent resident 3 but they check noncitizen. That might get flagged 4 on an ICE audit, but it's not a violation. It's 5 not a -- So it might be considered a technical 6 violation, and then -- but I don't believe that 7 would be a substantive, finable violation. 8 Q. It would be indicia? 9 A. It would likely be shown as a technical, 10 and then what would happen is it would be -- ICE 11 would return the I-9 to the employer and would 12 say this is a technical violation that needs to 13 be corrected within ten days. 14 Q. But it could be a factor in determining 15 whether an employer hired somebody who they knew 16 to be unauthorized; right? 17 A. Now, that -- Okay. Now, that's a 18 different question because you asked whether it 19 was a substantive violation. Now you're talking 20 about knowledge-based violations, so that's a 21 separate question. It could be a factor used by 22 ICE to try to support a knowing violation 23 allegation. 24 Q. What about a lawful permanent resident? 25 What does that mean?</p>

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<p style="text-align: right;">Page 130</p> <p>1 A. A lawful permanent resident is, by 2 slang, referred to as a green card holder 3 because in the old days those cards were green. 4 And it's basically someone who has established 5 the right to be here permanently, and they carry 6 with them all the rights that a citizen does, 7 minus certain things like the right to vote and 8 hold certain offices and things. 9 It also -- A lawful permanent 10 resident has the ability after a certain period 11 of time to naturalize, to become a citizen, 12 so it's -- it's a high -- it's high up on the 13 hierarchy of statuses. 14 Q. Is it hard to get? 15 A. It depends. It's hard to get through -- 16 The U.S. immigration system allows two paths. 17 One is an employer-based path, and one is a 18 family-based path. It's not hard to get them on 19 a family-based path. And there's also a path 20 for asylees and refugees, but the -- it takes 21 time to get that status. 22 Q. Is it -- Do they typically have to hire 23 a lawyer to do it? 24 A. No. No. In fact, if you're married to 25 a United States citizen, it's one or two forms</p>	<p style="text-align: right;">Page 132</p> <p>1 green card, a visa. They just know they're here 2 lawfully, right, so -- and then you start -- you 3 start asking them, well, how, and then they 4 present a lawful permanent resident card. 5 And so I don't think most people 6 from Central America would demarcate a green 7 card process versus some other process. I think 8 from other parts of the world, yes, you would 9 remember you went through that process because 10 there's typically an interview and there's other -- 11 other obligations. 12 Q. What about, what is a -- And I know 13 we're -- we're just about out of video here, so 14 we'll take a break after this, but what is an 15 alien authorized to work, that Box 4? 16 A. So when I -- when I spoke about there 17 being like 50 other codes of statuses that you 18 can have, that would be there. 19 So that would be somebody who is 20 here on a -- on a visa, somebody who has what's 21 called an employment authorization document as a 22 result of a visa program or, you know, if they're 23 an asylee, a refugee. 24 There's just -- There's lots of -- 25 There's like 50 different codes that would require</p>
<p style="text-align: right;">Page 131</p> <p>1 you fill out, an I-130 and an I-45. I mean, I 2 do them for people, but a lot of -- I would say 3 more than half of lawful permanent resident 4 holders have got that status by filing documents 5 themselves. 6 Q. But if you are not married to a United 7 States citizen or have other family members who 8 are a citizen, is it hard to get? 9 A. It takes more time. Like, if it's an 10 employee -- an employment-sponsored petition, 11 yeah, it takes more time. 12 Q. In your experience, is it -- is it a 13 significant enough process that somebody would 14 remember going through it? 15 A. Which type people? 16 Q. Somebody who became a lawful permanent 17 resident. 18 A. From what country and what dialect and 19 what educational background? 20 Q. Let's say Mexico. 21 A. Then, no, because a lot of times a work 22 card to them -- a lot of times a work card to 23 people from Central America that have immigrated 24 to the United States, a work card -- they don't 25 understand the difference between a work card, a</p>	<p style="text-align: right;">Page 133</p> <p>1 you to check that box, and those typically have 2 expiration dates. 3 Q. Okay. And if somebody is a lawful 4 permanent resident, would they always have an 5 alien registration number? 6 A. Yes, that would be typical. Now, there 7 is some regulatory case law that says if they 8 check that box and the permanent resident card 9 is used as a List A document in Section 2, they 10 do not need to fill in that blank. 11 Q. And then it has a space where the 12 employee signs it and dates it; right? 13 A. Right. 14 Q. And then below that there's a box 15 called Preparer and/or Translator Certification; 16 is that right? 17 A. Yes, and that -- that needs to be 18 filled out in the event the form is translated 19 for the employee or somebody assists the 20 employee with actually filling out Section 1. 21 Q. And why is that? 22 A. Because of that attestation issue 23 because in -- one defense to a false claim for 24 U.S. citizenship is that, oh, I didn't fill the 25 form out, I had somebody help me, okay, and now</p>

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<p style="text-align: right;">Page 134</p> <p>1 you can establish that.</p> <p>2 So they added this box in more</p> <p>3 recent versions; and I think it was probably</p> <p>4 HSI's, you know, idea to add it because it helps</p> <p>5 you. And then you say, well, okay, well, who</p> <p>6 filled it out for you?</p> <p>7 Okay. Now you've got that</p> <p>8 information, and then you would go to that --</p> <p>9 you know, if you're -- if you're an enforcement</p> <p>10 agency, you'd go to that person and you'd say</p> <p>11 did you fill this box out for this employee and,</p> <p>12 you know, on what basis did you check number 1,</p> <p>13 and that's how -- that's why that's there.</p> <p>14 Q. And the employee actually has to check</p> <p>15 whether or not they used a translator?</p> <p>16 A. That's -- That's a recent addition to</p> <p>17 the form. That wasn't on former versions. I</p> <p>18 think that that part came in in, like, 2018.</p> <p>19 But, yeah, and that's a technical violation if</p> <p>20 you don't, but you're supposed to check whether</p> <p>21 you used one or whether you didn't. You are</p> <p>22 supposed to check that box; but, again --</p> <p>23 Q. And even prior to 2018, if you did use a</p> <p>24 preparer or translator, then you had to identify</p> <p>25 that you did so; correct?</p>	<p style="text-align: right;">Page 136</p> <p>1 your -- What's your game plan there?</p> <p>2 MR. KLINEFELDT: Yeah. Can we go</p> <p>3 off the record and then we'll talk?</p> <p>4 MR. BISS: Sure. Yeah. Absolutely.</p> <p>5 THE VIDEOGRAPHER: We are going off</p> <p>6 the record. This is the end of Media Unit Number</p> <p>7 2. The time is 11:57.</p> <p>8 (A recess was taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on</p> <p>10 the record. This is the beginning of Media Unit</p> <p>11 Number 3. The time is 12:35.</p> <p>12 Q. Okay. Mr. Samson, when we left off, we</p> <p>13 had just stopped talking about Section 1 of the</p> <p>14 I-9, and we're going to move to Section 2. Okay?</p> <p>15 A. Yes.</p> <p>16 Q. And you've still got the I-9 and the</p> <p>17 instructions in front of you?</p> <p>18 A. I do.</p> <p>19 Q. So who fills out Section 2?</p> <p>20 A. Section 2 is filled out -- filled out</p> <p>21 by the employer or an authorized representative</p> <p>22 on behalf of the employer.</p> <p>23 Q. Okay. And they have to fill it out</p> <p>24 within three business days of the employee's</p> <p>25 first day of employment; is that right?</p>
<p style="text-align: right;">Page 135</p> <p>1 A. That's correct.</p> <p>2 Q. And the preparer or translator has to</p> <p>3 also attest under the penalty of perjury that</p> <p>4 they have assisted in the completion of Section 1</p> <p>5 of the form and that to the best of their</p> <p>6 knowledge the information is true and correct;</p> <p>7 is that right?</p> <p>8 A. That is correct.</p> <p>9 Q. And why is that important?</p> <p>10 A. It's important for the reason I just</p> <p>11 articulated. When you're talking about using</p> <p>12 this form as evidence to support a prosecution</p> <p>13 for false claim, the government would like to</p> <p>14 be able to say that there was full knowledge of</p> <p>15 what was being done, of what attestation was</p> <p>16 being made by the employee.</p> <p>17 Q. And because they want the employee to</p> <p>18 actually be accurate; right?</p> <p>19 A. Correct.</p> <p>20 MR. KLINEFELDT: Okay. We've got</p> <p>21 about 12 minutes left on tape. When we come</p> <p>22 back, I'll ask you about Section 2, but okay</p> <p>23 time to take a break, Steve?</p> <p>24 MR. BISS: Yeah. What's your plan,</p> <p>25 Nick, on taking a short lunch break? What's</p>	<p style="text-align: right;">Page 137</p> <p>1 A. That's correct. So if the employee</p> <p>2 starts on a Monday, this -- they need to review</p> <p>3 the documents no later than -- than a Thursday,</p> <p>4 Thursday that week.</p> <p>5 Q. And then right at the top, at the page</p> <p>6 2 there, it says, "You must physically examine</p> <p>7 one document from List A or combination of one</p> <p>8 document from List B and one document from</p> <p>9 List C as listed on the 'Lists of Acceptable</p> <p>10 Documents.'" Is that what it says?</p> <p>11 A. That's accurate.</p> <p>12 Q. And what does that mean?</p> <p>13 A. So List -- List A documents are those</p> <p>14 documents that -- that satisfy both the identity</p> <p>15 and the employment authorization component of</p> <p>16 the confirmation.</p> <p>17 That would be like a U.S. passport,</p> <p>18 a lawful permanent resident card, employment</p> <p>19 authorization document. It's documents that have</p> <p>20 both identity elements as well as authorization</p> <p>21 elements.</p> <p>22 If the employee does not present</p> <p>23 a List A, then they must present a List B and a</p> <p>24 List C. List B documents are those documents</p> <p>25 that establish identity. This is your typical</p>

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<p style="text-align: right;">Page 138</p> <p>1 identification card, driver's license, you know, 2 school ID, things of that nature. 3 And then the List C document is 4 the document that establishes employment 5 authorization, which is -- you know, List C is 6 quite typically a Social Security card, but it 7 can be -- there are other List C documents. 8 And then the -- the other aspect 9 of Section 2 is the physical examination of the 10 documents, and there's a certification that 11 requires the employer to attest that they've 12 examined the documents presented and that the 13 documents appear to be genuine and to relate to 14 the employee named and that to the best of their 15 knowledge the employee is authorized to work in 16 the United States. So there's an attestation 17 component to Section 2 as well. 18 Q. And I notice at the top of Section 2 it 19 asks the employer to verify the last name, first 20 name, and middle initial of the employee; is 21 that right? 22 A. This section is new to the form in the 23 last two or three years. It's basically just a 24 carryover from Section 1 and just asks the 25 employer to write the last name, the first name,</p>	<p style="text-align: right;">Page 140</p> <p>1 of Section 2 is quite often left blank by 2 employers. It's one of the most -- It's a 3 technical violation, and it's one of the most 4 common lately that I've seen, but they would 5 have -- employers would have, you know, notice 6 of what the -- of what box was checked anyway 7 because they have access to Section 1. 8 Q. And so -- And then it looks like, you 9 know, at least half of Section 2 is room for 10 the employer to actually describe the identity 11 and employment authorization documents; is that 12 correct? 13 A. That's correct. They are required to 14 list the document title, the issuing authority, 15 the document number and the expiration date 16 and -- 17 Q. Why is that important? 18 A. Well, it's important because there's no 19 obligation that the employer retain copies of 20 the documents themselves. That's always been an 21 optional obligation. So a lot of employers will 22 just fill in the data, give the documents back 23 to the employee. 24 I personally advise my clients to 25 always keep copies of the documents, and the</p>
<p style="text-align: right;">Page 139</p> <p>1 and then also the number of the box that the 2 employee checked. 3 Q. Right. So it asks the employer to 4 identify the citizenship or immigration status 5 of the employee; is that correct? 6 A. It asks the employer to carry over the 7 data from Section 1. That's why it says 8 "Employee Info from Section 1." 9 The employer itself isn't -- 10 isn't verifying that, but they're just basically 11 carrying the data over from Section 1, if that 12 makes sense. 13 Q. I'm sorry, where does it say that? 14 A. In the left -- left side in bold it 15 says "Employee" -- 16 Q. Okay. 17 A. -- "Info from Section 1." All the -- 18 All the employer is required to do is just to 19 transfer that data over so that -- I think it's 20 for ease of reference for review purposes. 21 Q. And, then, but the employer would know, 22 hey, look, this is what box the employee checked 23 and here's what their name is; right? 24 A. If they complete that portion, yes. 25 The -- In reality, this information at the top</p>	<p style="text-align: right;">Page 141</p> <p>1 reason why is because it's -- it's a shield 2 from liability in the sense that it shows ICE 3 exactly what you reviewed when you filled in 4 the information. 5 The other thing is that there is 6 some regulatory law, some OCAHO decisions that say 7 if you attach a copy of the document, you don't 8 have to fill in this information perfectly, so it's 9 like an extra layer of liability -- a shield of 10 liability for the employer. 11 Q. But you actually do still have to fill 12 out this section and describe the documents even 13 if you take photocopies. Isn't that true? 14 A. I disagree on that point. The -- The -- 15 There's OCAHO case law that says that if you 16 retain the document, you don't necessarily have 17 to fill in these columns. 18 Now, that was three or four years 19 ago, and I've seen it go both ways, so I would -- 20 I would characterize that as a little bit of a 21 gray area as to -- 22 Q. What do you advise your clients to do? 23 A. Both, because it's a -- it's a -- just an 24 extra layer of protection. I mean, if you've -- 25 And it works both ways. If for some reason you</p>

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<p style="text-align: right;">Page 142</p> <p>1 put in the wrong document number, then -- or you 2 leave the issuing authority blank, ICE has a 3 copy of the document attached, and ICE will not 4 typically fine for that or treat it as a -- as a 5 violation. That's why I always advise to do 6 both, because it's like you have -- you know, 7 you have two bites at the apple to get it right. 8 Q. Right. And so is it your testimony 9 that it's not a substantive violation to not 10 fill out this section on identity and employment 11 authorization even if you've retained photocopies 12 of the IDs? 13 A. It's a gray area. It may be from ICE's 14 perspective a substantive violation, but there 15 is OCAHO case law where they have found it not 16 to be a violation when the document -- when copies 17 of the documents are attached. 18 Q. And part of the reason why that's 19 important is because, even if you take photocopies 20 of the IDs, there's no way to attach the I-9 form 21 to the IDs; isn't that true? 22 A. Well, I mean, typically employers will 23 attach the photocopy to the I-9. 24 Q. But you're not making any attestation. 25 You know, you would have wiggle room there to</p>	<p style="text-align: right;">Page 144</p> <p>1 work best -- based on that review. 2 Q. Well, it doesn't say based on that 3 review, does it? 4 A. It says, "I attest, under penalty of 5 perjury, that I have examined the documents 6 presented by the above-named employee, the 7 above-listed documents appear to be genuine and 8 to relate to the employee named, and (3) to the 9 best of my knowledge the employee is authorized 10 to work." 11 So, arguably, that could be 12 considered separate, that part of the attestation, 13 but it's in relation to the review of the 14 documents. 15 Q. And they're actually -- they're 16 separated out by numbers, right? They list 17 three separate requirements; is that correct? 18 A. Three -- There are -- That's correct, 19 that there's three separate components of the 20 attestation. 21 Q. And kind of, you know, apropos of our 22 conversation at the top of the deposition, one 23 of those requirements is stating, under the 24 penalty of perjury, that to the best of my 25 knowledge the employee is authorized to work in</p>
<p style="text-align: right;">Page 143</p> <p>1 say, well, wait a minute, that's not the IDs I 2 reviewed. 3 A. Right, which is why I think it's a best 4 practice to do both. I really do. But what I'm 5 saying is -- And the reason why it's a best 6 practice is because if you have the document 7 attached and you either leave one of the blanks 8 blank or you, you know, transpose a number and 9 you don't have it right, then the document is 10 your backup. 11 Q. Right. It's still important to fill 12 that out. Fair? 13 A. Right. I just -- I would disagree that 14 it's -- it's a substantive violation. 15 Q. And then below that there's a 16 certification for the employer; is that correct? 17 A. That's correct. 18 Q. And what does that say? 19 A. And this is -- this is a required 20 component of Section 2. This is the -- essentially 21 the standard of review for employers. They're 22 certifying that they physically examined the 23 documents presented, that they appear genuine and 24 relate to the employee named and that to the best 25 of their knowledge the employee is authorized to</p>	<p style="text-align: right;">Page 145</p> <p>1 the United States; right? 2 A. Right. The only -- The only way an 3 employer could make that attestation would be 4 based on its review of the documents, which is 5 why that appears under Section 2. 6 Q. Well, that's not true, is it, because 7 you could -- you could, conversely, not be able 8 to make it even if somebody showed you documents 9 that look great, they were great fake documents, 10 but you know that person is not here legally 11 because they told you? 12 A. Right. That would be -- that would be 13 the rare hypothetical where -- which we talked 14 about when we were going through the bullet 15 points earlier and when we were looking at the 16 instructions. 17 That would be a situation where, 18 if you have knowledge separate and apart from 19 your review of the documents, then, yes, that -- 20 that -- you would, you know, not want to attest 21 to this. 22 Q. But it's not your testimony that it's 23 rare for people in the agriculture industry to 24 present fake documents and work here illegally, 25 is it?</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. No.</p> <p>2 MR. BISS: Object to the form.</p> <p>3 A. I don't think it's rare. I don't think</p> <p>4 it's rare that individuals would present fake</p> <p>5 documents. I think it's rare that employers</p> <p>6 would have actual knowledge that they're fake or</p> <p>7 fraudulent.</p> <p>8 Q. And the second requirement is actually</p> <p>9 you're saying -- you know, the first requirement</p> <p>10 is saying, hey, I've reviewed -- examined the</p> <p>11 documents and then the above-listed documents,</p> <p>12 so part of the attestation is the description of</p> <p>13 the documents.</p> <p>14 A. Right.</p> <p>15 Q. Right. It doesn't say, you know,</p> <p>16 attached photocopy documents or the documents I</p> <p>17 reviewed. It actually says the above documents,</p> <p>18 I'm attesting that the above documents appear to</p> <p>19 be genuine and relate to the employee named;</p> <p>20 right?</p> <p>21 A. Right. That's that reasonableness</p> <p>22 standard. The case law is developed around that</p> <p>23 part of the attestation, that a reasonable</p> <p>24 employer, so they appear to be genuine and</p> <p>25 relate to the employee named under a reasonable</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Correct.</p> <p>2 Q. But -- But -- And then, separately,</p> <p>3 that to the best of my knowledge the employee is</p> <p>4 authorized to work in the United States; right?</p> <p>5 A. Correct.</p> <p>6 Q. And then -- And so let's -- And then I</p> <p>7 want to ask you about this, this standard, so --</p> <p>8 but before I do, the certification requires the</p> <p>9 employee -- or, I'm sorry, the employer who</p> <p>10 reviewed it to then sign it; right?</p> <p>11 A. Yeah, the individual who reviewed the</p> <p>12 documents, correct.</p> <p>13 Q. And they're attesting to that under the</p> <p>14 penalty of perjury, which is a felony; right?</p> <p>15 A. Right.</p> <p>16 Q. And so what is -- in your experience</p> <p>17 and opinion, what does an employer have to do</p> <p>18 to satisfy this attestation with respect to a</p> <p>19 review of the documents?</p> <p>20 A. Well, it's not necessarily my opinion.</p> <p>21 It's the opinion of -- it's the opinion of the</p> <p>22 judicial tribunal or the ALJ that -- you know,</p> <p>23 Office of the Chief Administrative Hearing</p> <p>24 Officer and the federal law that's kind of</p> <p>25 developed around it, but basically the employer</p>
<p style="text-align: right;">Page 147</p> <p>1 employer review.</p> <p>2 Q. And so that's another reason why it's</p> <p>3 important to list out those documents, because</p> <p>4 it's part of your attestation; right?</p> <p>5 A. It's -- Yeah. I mean, I always advise</p> <p>6 that they do that, but I'm just telling you that</p> <p>7 there's -- there's regulatory decisions out</p> <p>8 there that say if you've attached copies of the</p> <p>9 documents, it's -- you are not required to fill</p> <p>10 in the information.</p> <p>11 But, again, I would characterize</p> <p>12 that as a gray area; but, I mean, the form</p> <p>13 itself supports the idea that you are to fill in</p> <p>14 the information in those blanks. I agree with</p> <p>15 you.</p> <p>16 Q. And then -- And you're really attesting</p> <p>17 to two things. You're attesting to that you've</p> <p>18 examined the documents and they appear to be</p> <p>19 genuine and relate to the employee; correct?</p> <p>20 A. Correct, because they can appear to be</p> <p>21 genuine and not relate to the employee.</p> <p>22 Q. Right. If I used your ID, for</p> <p>23 example --</p> <p>24 A. Right. It's a genuine document.</p> <p>25 Q. -- it looks genuine, but it ain't me.</p>	<p style="text-align: right;">Page 149</p> <p>1 is held to a reasonableness standard, and so</p> <p>2 they're to conduct a reasonable inspection of</p> <p>3 the documents.</p> <p>4 Q. And so what do they have to look for?</p> <p>5 Like, what does that include? When you're</p> <p>6 looking at a document, what are you looking for?</p> <p>7 A. Well, it's fact-based. It's a</p> <p>8 fact-based inquiry, and that's what the case</p> <p>9 law has kind of developed.</p> <p>10 Aramark, that Aramark decision</p> <p>11 out of the Ninth Circuit, is kind of the seminal</p> <p>12 decision on that. It gives a bunch of different</p> <p>13 examples of where, you know, the court found</p> <p>14 a reasonable employer isn't expected to have</p> <p>15 identified that versus they would have identified</p> <p>16 that.</p> <p>17 So it's really fact-intensive,</p> <p>18 the law is, and that -- you know, that's what</p> <p>19 I'm giving an opinion on. The law is, in</p> <p>20 general, a reasonable employer, so would a</p> <p>21 reasonable employer have determined that the</p> <p>22 document was genuine and related to the employee</p> <p>23 named.</p> <p>24 I give the example of the employee</p> <p>25 who presents -- you know, when I give seminars,</p>

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<p style="text-align: right;">Page 150</p> <p>1 I give the example of the employee who presents 2 a driver's license, the male employee who 3 presents a driver's license of a -- of a female 4 employee. 5 Now, a reasonable employer would 6 feel comfortable not being discriminatory in 7 identifying that that didn't relate to the 8 employee named. Of course, that's changed now a 9 little bit, too, but the issue is, is it's a 10 reasonableness standard. 11 Q. And so checking dates, would that be 12 part of it? 13 A. Checking what types of dates? 14 Q. Expiration dates. 15 A. Well, that's part of the physical 16 review. I mean, that's part of the filling in. 17 Q. Right, birth dates, issue dates? 18 A. Reviewing, cross-checking is probably 19 not required of an employer as far as, like, 20 cross-checking documents across -- 21 Q. I'm just saying -- 22 A. -- throughout the form. 23 Q. -- if I gave you an ID -- 24 A. Yeah. 25 Q. -- that said I was 18 years old, that</p>	<p style="text-align: right;">Page 152</p> <p>1 constructive knowledge, and my questions are 2 more about is it a factor that can contribute to 3 constructive knowledge; right? Does that make 4 sense? 5 A. Yeah, I would agree with you that those 6 are -- that those are factors and that it's a 7 fact-based inquiry, you know. 8 Q. And so -- And, likewise, typos. That 9 could be a factor; right? 10 A. Blatant typos, I think. I don't 11 think -- Well, I know because the case law 12 supports that an employer is not necessarily 13 required to read the fine print on the back of a 14 Social Security card to make sure every word is 15 spelled correctly. 16 An employer is not required to -- 17 but, you know, blatant typos that are legible 18 from the document, that would be a -- that would 19 be indicia, I would say. 20 Q. What other sort of indicia or indications 21 of possible fake documents have you seen? 22 A. Would a -- Have I seen be found -- 23 Q. Either in your personal experience or 24 in the case law or anywhere else. 25 A. Well, you know, I always analyze things</p>
<p style="text-align: right;">Page 151</p> <p>1 would be a clue, right, that this document is 2 probably not legitimate? 3 A. It could be; but, I mean, again, that 4 is a very slippery slope for an employer, to try 5 to make an age-based analysis or to try to -- 6 you know, to do a name-based analysis. 7 You know, I have -- When I advise 8 on this exact issue -- These are the questions I 9 get the most, and it is very dangerous to 10 overscrutinize documents. 11 Q. What about names and spellings of names? 12 A. Aramark -- The Aramark case actually 13 discusses that; and, you know, if -- I believe 14 the court in that case found that, you know, 15 like a missing consonant or things of that 16 nature, that a reasonable employer may not have 17 caught that, and so they did not find that that 18 somehow put them on constructive knowledge, but -- 19 Q. Right. And that -- 20 A. I mean, that's the inquiry. The 21 inquiry is what would a reasonable employer have 22 identified. 23 Q. Right. And so I could probably save us 24 a lot of time, since I understand that a lot of 25 what I'm asking about by itself doesn't establish</p>	<p style="text-align: right;">Page 153</p> <p>1 under the backdrop of a reasonable employer 2 exercising the appropriate level of review 3 because you don't want them exercising one level 4 of review for a certain applicant versus another. 5 So I've seen, you know, driver's 6 license cards where the state is misspelled, you 7 know, or where it's real blatant, like a blatant 8 error like that. I've seen some very blatantly 9 bad where the -- you know, but, again, my review 10 is not -- my level of review is not the level 11 that an employer is required to undertake. I 12 was trained on this. I was -- I went to various 13 seminars as, you know -- 14 Q. And I get that, and so -- 15 A. And so, I mean, I can spot a fake a 16 lot -- a lot faster than an employer would be 17 able or would even be required to spot, so it's -- 18 but as far as what the case law says, yeah, I 19 think the words that I've seen are blatant. 20 Q. Well, any -- any typos could be a 21 factor; right? I'm not saying by itself 22 contribute to constructive knowledge, but a 23 small typo in somebody's name or anything else 24 could be something that enters into the analysis 25 of whether somebody is unauthorized; right?</p>

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<p style="text-align: right;">Page 154</p> <p>1 A. It would enter into the analysis if 2 it's -- if it's spotted by the employer; but, 3 again, I've seen case law where the misspelling 4 of a word -- because there's a bunch of -- on a 5 Social Security card, there's like a paragraph 6 of fine print, and I've seen ICE try to use that 7 to establish, and it's typically not upheld or 8 sustained. 9 Q. Is the -- Is it true that there are 10 several OCAHO cases that refer to filling out 11 all of Section 2 is the heart and most important 12 part of the I-9 process? 13 A. That's accurate. And that's why I 14 advise on that. Judge -- Judge Ellen Thomas has 15 some decisions where she's -- she's said that, 16 but she also -- she said it in the context of, 17 for example, if the issuing authority is missing 18 but the document is attached, that's like an extra 19 layer of protection, so that's not necessarily 20 going to be a violation, but -- 21 Q. And so -- 22 A. Go ahead. 23 Q. And so let's move on now to the legal 24 standard, so the -- we've been talking about 25 employers violating immigration law and</p>	<p style="text-align: right;">Page 156</p> <p>1 You're familiar with that statute; 2 is that right? 3 A. Yes. 4 Q. Okay. And what I wanted to do is I 5 just wanted to have it available to you as a 6 reference because I think it's unfair to be 7 asking you about statutory language without 8 putting the statute in front of you. 9 A. Yeah. No, definitely. 10 Q. Okay. Okay. And so what are the ways -- 11 And so what, generally, does 8 U.S.C. 1324a make 12 illegal? 13 A. Well, there's -- there's basically two 14 components to it. So it's (a)(2) -- (a)(2) is 15 the one I think you're asking me about, and 16 that's continuing employment. It basically 17 makes it illegal to hire an alien, so that's a 18 knowing hire, and to continue to employ the 19 alien in the U.S. knowing the alien is 20 unauthorized with respect to such employment. 21 So it essentially prohibits the 22 knowing hire or knowing continued employment of 23 an alien knowing the alien is unauthorized for 24 work. 25 Q. And so the title of 8 U.S.C. 1324a is</p>
<p style="text-align: right;">Page 155</p> <p>1 specifically about, you know, wrongfully hiring 2 unauthorized workers. 3 What is the statute that governs 4 that? 5 A. So I think what you're asking me is 6 what -- what statute controls the review aspect? 7 Q. Well, what statute makes it illegal for 8 an employer to hire an unauthorized worker? 9 A. 1324a, I believe. 10 Q. Okay. Yeah. 11 A. Off the top of my head. 12 Q. And that's what -- 13 A. Off the top of my head. 14 Q. Yeah, so 8 U.S.C. 1324a. 15 A. That's right. 16 Q. Okay. And then let me do this. Because 17 I thought about this the other day. Let me give 18 you an exhibit that -- Okay. What I've done is -- 19 Let me show you what I've marked as Exhibit 92. 20 A. Okay. 21 Q. And, you know, you can review it; and 22 I'm not asking you to, you know, validate it or 23 verify that, you know, this is a complete and 24 accurate copy of the U.S. Code; but what it is, 25 is a printout of 8 U.S.C. Section 1324a.</p>	<p style="text-align: right;">Page 157</p> <p>1 the "Unlawful employment of aliens"; right? 2 A. That's correct. 3 Q. And Subsection (a) is titled "Making 4 Employment of Unauthorized Aliens Unlawful"; 5 right? 6 A. Correct. 7 Q. And it identifies three ways to violate 8 the statute. Is that fair? And maybe let me 9 break it down, and we can save some time here. 10 So it says there's three ways to 11 violate Subsection (a), Making Employment of 12 Unauthorized Aliens Unlawful. 13 One way is to, essentially, hire 14 for employment in the United States an alien 15 knowing the alien is unauthorized to work in the 16 United States; right? 17 A. Right. That's accurate. 18 Q. And then a second way would be to -- 19 And I'm jumping down. That would be (a)(1)(A). 20 I'm jumping down to (a)(2). 21 A second way would be to continue 22 to employ an individual after learning that they 23 are unauthorized to work in the United States; 24 right? 25 A. That's accurate. That's -- That's</p>

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<p style="text-align: right;">Page 158</p> <p>1 what's referred to as a knowing continued 2 employment versus a knowing hire. And then the 3 third -- the third way to violate this statute 4 is found at (B) -- (B)(i) and (i)(2). But 5 basically it's without complying with the 6 requirements. This is what -- This is where -- 7 This section, this Section (B) here, is what ICE 8 uses for its paperwork violations. 9 Q. Okay. 10 A. But it's unrelated to knowledge, that 11 component. Do you see what I'm saying? Because 12 this is just -- You can violate 1324a, (a)(B) 13 there, you can violate that with regard to U.S. 14 citizen workers. That's the paperwork element. 15 Okay? So this statute can actually be violated, 16 and that's what they use as their basis to lodge 17 the civil monetary fines. 18 Q. And what that third way to violate the 19 statute is, is it's basically failing to comply 20 with the employment verification process that is 21 set out in the chapter; right? 22 A. Without regard to knowledge of whether 23 the person is unauthorized or not. That is -- 24 This is the paperwork element. This is the we, 25 you know, only got a List B document, I didn't</p>	<p style="text-align: right;">Page 160</p> <p>1 the employment verification process; and as you 2 rightfully indicated, there's no, like, 3 knowledge component of that, but -- and so the 4 way the statute deals with that, it says, look, 5 if you comply in good faith with it, even if 6 you've made some mistakes, then you have a 7 defense, you haven't violated the statute; 8 right? 9 A. With regard to Subsection (B), yes. 10 Q. Right. Right. 11 And so, conversely, if somebody 12 is not complying with the I-9 process in good 13 faith, then you have violated that subsection; 14 correct? 15 A. Well, I mean, ICE would still have to 16 prove that, you know, meet their burden of 17 proof, but you don't have the safe harbor of the 18 good-faith defense. You would lose the safe 19 harbor of the good-faith defense. 20 Q. Right, and you would violate the 21 statute. 22 A. If ICE is able to establish its burden 23 of proof, yes. 24 Q. Right. 25 A. And if a judicial tribunal finds that</p>
<p style="text-align: right;">Page 159</p> <p>1 get a List C. So that -- This part of the 2 statute is what ICE uses to lodge substantive 3 violations. 4 Q. And the employment verification process 5 that it refers to, that's generally the I-9; 6 right? 7 A. Right. 8 Q. And so, however, for purposes of the 9 criminal statute at least, it says just making, 10 you know, a clerical error or something like that 11 isn't going to cause you to violate the criminal 12 statute; right? 13 A. That's correct. I mean, yeah. 14 Q. But if you fail to comply with it in 15 good faith, then you have violated the criminal 16 statute; right? 17 A. That's not -- That's not my understanding 18 of what it says. I think it's actually the 19 reverse. The good faith -- If you comply in good 20 faith, it's a defense. 21 Q. Right. And so I think we're saying the 22 same thing, but you've stated it much more 23 eloquently than I have. 24 It's essentially that, hey, you 25 violated (a)(1)(B) if you failed to comply with</p>	<p style="text-align: right;">Page 161</p> <p>1 ICE established its burden of proof. I mean -- 2 Q. Regardless is somebody can prove -- 3 A. ICE is not the judge -- 4 Q. Right. 5 A. ICE is not the judge and jury here. 6 Right? I mean, they can bring whatever 7 allegations they want as the enforcement agency, 8 but ultimately there's an analysis that would 9 need to be done by a judicial tribunal to find 10 that there was an actual violation of the 11 statute, but you're right -- 12 Q. Right. 13 A. -- in the way you're saying the statute 14 reads. 15 Q. And let's kind of divorce for a second 16 how somebody is proven guilty of that, but it 17 would be if -- if the government proved that the 18 employer hired for employment an individual in 19 the United States without complying with the I-9 20 requirements, then -- 21 A. We're talking -- Go ahead. 22 Q. -- then you have violated the statute 23 unless you can show that you have complied in 24 good faith with those requirements; right? 25 A. You would be subject to a violation of</p>

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<p style="text-align: right;">Page 162</p> <p>1 1324a, Subsection (B,) for that, for that, and 2 that for -- for substantive violations, and 3 that's -- that's where -- when ICE created its 4 guidance on this point, that's where they drew 5 the line, is that is there certain violations 6 that are considered technical that would not 7 fall within the ambit of this statute; but, 8 ultimately, ultimately, any allegation by ICE 9 that you're in proper compliance would be 10 subject to review. I just -- I just -- 11 Q. I get that. 12 A. I can't emphasize that enough. 13 Q. And I know, and I think you've done a 14 good job. 15 A. Okay. 16 Q. I understand that there's got to be 17 some sort of due process to proving somebody 18 violated a statute, whether it's the, you know, 19 administrative process or the criminal process. 20 I get that, and I also understand that a lot of 21 these can be administrative violations, some 22 technical, some substantive, but I know we're -- 23 we're burning a lot of time here, and I want to 24 make sure that we can try to get you out of here 25 by 4:00.</p>	<p style="text-align: right;">Page 164</p> <p>1 case law. 2 Q. And your report cites 8 CFR 274a and 3 states that knowledge includes not only actual 4 knowledge but also knowledge which may fairly be 5 inferred through notice of certain facts and 6 circumstances which lead a person through the 7 exercise of reasonable care to know about a 8 certain condition. Is that fair? 9 A. That's right. That's accurate. 10 Q. And so what is the exercise of reasonable 11 care? 12 A. Well, that's developed. I mean, that's 13 a -- that's a great question because that's 14 what's litigated, you know, on these cases. And 15 I would point you to Aramark because that's -- 16 that's the case that really digs into that, that 17 standard and provides good analysis and cites to 18 other cases that have addressed it and things. 19 So, I mean, that's the -- that's 20 the million dollar question, is what is 21 reasonable care. Right? And that's what ICE -- 22 whenever ICE is bringing, you know, charges or 23 administrative fines on the basis, that's what 24 they're having to try to meet for their burden 25 of proof.</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Sure. 2 Q. And so let me move on. 3 The -- With respect to good faith, 4 one of the -- one of the ways the government 5 could prove that you do not -- you did not go 6 through the I-9 requirements of good faith is if 7 you have a pattern and practice of violations; 8 correct? 9 A. That's a different analysis, the pattern 10 and practice. I believe that's a completely 11 different analysis. I know what you're referring 12 to. That is an element. If you show like -- The 13 good-faith defense is not going to be available to 14 you if you have -- if you have, just in general, 15 a pattern and practice of poor compliance. I 16 agree with that aspect. I don't know that that 17 comes out of the statute, though. 18 Q. And then with respect to knowledge that 19 the statute talks about, that knowledge can be 20 either actual or constructive; correct? 21 A. The case law around -- around the 22 terminology of, yeah, 1324a(1)(A) and (A)(2) has 23 said it can be actual knowledge or constructive 24 knowledge. The constructive knowledge element 25 was significantly restricted, though, by -- by</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. And so it can be -- it can include the 2 duty to look further into something. Is that 3 fair? 4 A. That is fair. I mean, yeah, that would 5 be an aspect of it, if the facts supported that, 6 right. 7 Q. So fair to say it is very fact-based? 8 A. Oh, as I think I've said ten times 9 today, it's a fact-based inquiry. 10 Q. And that can be -- you know, it could 11 be one single fact that establishes knowledge or 12 it could be multiple facts. Is that fair? 13 A. That's fair. There are certain factors 14 that should not be considered, though. And then 15 you have to remember that it's not just what a 16 reasonable person, it's what a reasonable 17 employer would have discovered and against the 18 backdrop of that antidiscrimination clause and 19 provision. 20 Q. And so let me ask you about your base 21 of knowledge for this case in particular. 22 First, I've got to ask you, have 23 you already been paid for this case? 24 A. No, I have not. 25 Q. And so --</p>

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<p style="text-align: right;">Page 166</p> <p>1 A. When you say "this case," you're 2 talking about your underlying litigation? 3 Q. Yeah. 4 A. No, I have not. 5 Q. And so your report I think on page 5 6 spells out what you reviewed for this case; is 7 that right? 8 A. That's correct. 9 Q. And -- 10 MR. BISS: Hey, Nick? 11 MR. KLINEFELDT: Yep. 12 MR. BISS: Nick, before we get 13 into that, before we get into the substance of 14 what he reviewed, I'm going to designate the 15 entire deposition transcript as counsels' eyes 16 only. Do you understand that, that I've made 17 that designation? 18 MR. KLINEFELDT: Yep. The -- 19 MR. BISS: Okay. Thank you. 20 Q. And so on page 5 of your report, you 21 identify what you reviewed for this case; is 22 that correct? 23 A. That's correct. 24 Q. Do you have -- Is your knowledge of 25 this case based on anything besides those</p>	<p style="text-align: right;">Page 168</p> <p>1 of audit you're doing. If you're auditing their 2 business practice surrounding I-9, then, yeah, 3 it would be important to have that dialogue. If 4 you're just doing a paperwork audit, all you 5 need is the I-9s, and then you -- you know, but 6 in general, yeah, you would. 7 Q. What -- I noticed that you mentioned 8 some miscellaneous exhibits introduced during 9 depositions. 10 Do you remember what those were? 11 A. Not specifically, but I think it was 12 the -- I think I -- I think it was the -- like, 13 the [REDACTED] -- I think the [REDACTED] deposition 14 may have included some citations to statements 15 that she made or some -- something like that. 16 That might have been why I included that. 17 Q. How were the documents that you reviewed 18 selected? 19 A. They were provided to me by Mr. Biss. 20 Q. Did you ask in particular to review any 21 certain documents? 22 A. No. I was primarily focused on the 23 expert reports of Arnold and Martin, so I wanted 24 to see what they looked at, you know, so that I 25 could -- I mean, because the nature of my -- of</p>
<p style="text-align: right;">Page 167</p> <p>1 documents? 2 A. No. It would be limited to this, these 3 documents. And, you know, I primarily focused 4 on the expert reports of Arnold and Martin. I 5 did review the deposition transcripts, paid 6 particular attention to the -- to the I-9s that 7 were focused on by Mr. Arnold and, you know, also 8 listened to the audiotapes of the interviews, 9 and my knowledge of the case would be limited to 10 that. 11 Q. Did -- Have you ever talked to anyone 12 at NuStar? 13 A. No, I have not, other -- only their 14 counsel. 15 Q. Typically when you're doing an audit 16 for a client, would you talk to them? 17 A. Oh, absolutely. I would be -- I would -- 18 Yes, I would have to. 19 Q. And why is that? 20 A. In order to obtain the I-9s, I would have 21 to speak to the -- to the client. 22 Q. And aside from actually just getting 23 the documents, would it be important to talk to 24 the client? 25 A. Yeah. I mean, it depends on what type</p>	<p style="text-align: right;">Page 169</p> <p>1 my retention was essentially -- I mean, it wasn't 2 to do an I-9 audit. It was to, you know, express 3 some opinion on as to what the standards are 4 that are relevant to your case and to basically 5 analyze statements that were made by Mr. Arnold 6 and Mr. Martin in their reports, you know, against 7 what the law actually says. 8 Q. Did you ask to review any specific 9 documents? 10 A. Not that I recall. I felt like what I 11 received was sufficient for me to, you know, 12 perform the analysis. 13 Q. Did you review the SSN no-match letters 14 that NuStar received? 15 A. I did review some of those. I believe 16 that was in there. And, I mean, I'm generally 17 aware of what no-match letters are. I also saw -- 18 saw the references to those in the Arnold report. 19 Q. And were you aware that NuStar received 20 a letter dated in December 2019 stating that 20 21 out of 27 of its employees for tax year 2018 did 22 not match? 23 A. That is referenced in the Arnold report, 24 to my recollection. 25 Q. And were you also aware that NuStar</p>

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<p style="text-align: right;">Page 170</p> <p>1 then again received a letter the next year, 2 December 2020, that 14 out of 19 employees, of 3 its employees for tax year 2019, did not match? 4 A. Yes, I recall that being stated in the 5 Arnold report. 6 Q. Were you aware of what NuStar's response 7 was to those letters? 8 A. My under -- My understanding from 9 reviewing the Arnold report -- and, again, I 10 didn't make -- I didn't make a lot of inquiry 11 into that because my -- I'm very aware of what 12 an employer's obligations are in response to a 13 no match, so -- but I did see in the -- at least 14 the Arnold report seemed to indicate that there 15 was not -- that there was either little or no 16 action taken in response. 17 Q. In fact, there was -- there was no action. 18 They did not follow up with any employees. Were 19 you aware of that? 20 A. I was aware that that was stated. The -- 21 You know, in general, the no match or employer 22 correction notices, there is a significant part 23 of the AILA bar that actually advises not to take 24 action in response to Social Security no-match 25 letters, and that's because it's so -- you know,</p>	<p style="text-align: right;">Page 172</p> <p>1 the Social Security benefits and money that's 2 supposed to go to your employee may not be going 3 to your employee? 4 A. That -- Right. 5 MR. BISS: Object to the form. 6 A. I mean, that's -- that, to my knowledge, 7 is the reason for the employer correction notice, 8 is so that the employer can, you know, check the 9 W-2 to make sure that it adequately reflects what 10 the employee gave them. 11 If they do that, if they check 12 the W-2, you know, the inquiry is -- if there's 13 some sort of an error on that W-2, then that can 14 be corrected, but you're dead on to what the 15 purpose of that employer correction notice is. 16 It's to alert the -- 17 Q. And aren't you supposed to tell the 18 employee? 19 A. I don't -- I don't know that that's in 20 the -- that that's in their -- their FAQs. I 21 think it's more of a you need to check your 22 records type of an instruction. 23 Q. And so if you -- 24 A. You have to go -- The reality is, you 25 have to go access something called like the SBO</p>
<p style="text-align: right;">Page 171</p> <p>1 so I just did not consider that really too much 2 of a relevant factor because -- 3 Q. Isn't it something that ICE considers? 4 A. Right, and it's been -- as I've said 5 earlier, it's been subject to significant 6 challenge that they should consider that; and, 7 in fact, you know, there's been years and years 8 of litigation on that exact issue. 9 Q. And isn't one of the purposes of the 10 SSA no-match letter to let the employer know 11 that the Social Security tax that the employer 12 is withholding from that employee's paycheck 13 isn't getting attributed for the benefit of the 14 employee? 15 A. That is the sole -- That's the sole 16 purpose. It doesn't have anything to do with 17 employment verification. It's solely to alert 18 the employer that the W-2 -- the W-2 C, I 19 believe, is not -- it does not match and so 20 therefore withholdings may not be properly 21 accounted to the -- to that Social Security 22 account number or whatever. 23 Q. So, in other words, Social Security is 24 telling you, whether you believe if I have this 25 right or wrong, Employer, I'm telling you that</p>	<p style="text-align: right;">Page 173</p> <p>1 business portal to actually even see the names, 2 and then you have to establish an account. A 3 lot of employers don't do that. 4 Q. But fair to say if you cared about your 5 employees, you'd follow up and to make sure that 6 they were getting their Social Security benefits; 7 right? 8 MR. BISS: Object to the form. 9 A. You're asking me personally if I cared? 10 Q. Yeah. 11 A. I mean -- Right. I mean, I would say 12 that there would be -- And this is separate and 13 apart from the immigration issue. There would 14 be -- Yeah, I mean, I would say you would want 15 to alert your employee that potentially there's 16 an error to their Social Security number. 17 Q. And that they're not getting -- they 18 might not be getting the Social Security benefits 19 they're entitled to; correct? 20 A. Right. And the same thing holds true -- 21 This is the big misconception in the United States, 22 right, is that unauthorized workforces are -- are 23 getting paid without paying taxes. It's actually 24 the inverse. 25 Q. Right.</p>

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<p style="text-align: right;">Page 174</p> <p>1 A. Most -- Most unauthorized workers are 2 paying taxes and not getting returns. 3 Q. And so -- 4 A. So it's -- 5 Q. -- one reason -- 6 A. That's one reason that they do that. 7 Q. One reason you wouldn't follow up with 8 the employee is that if you knew that there's no 9 way to resolve that; isn't that fair? 10 MR. BISS: Object to the form. 11 A. In your -- In your hypothetical, one 12 reason an employer may not follow up would be -- 13 Yeah, I mean, that's a plausible reason that 14 they would not follow up, would be that there 15 would be concern the employee would not be able 16 to resolve the no match. 17 Q. Is there any other reason why you 18 wouldn't? 19 MR. BISS: Object to the form. 20 A. There's probably many reasons, but the -- 21 you know, I think -- I think, in general, most of 22 those W-2 C's are corrected. And those no-match 23 letters can relate to a lot of different errors. 24 And so, you know, I'm not sure. I'm not sure if 25 there's other reasons.</p>	<p style="text-align: right;">Page 176</p> <p>1 done after the date of the article, after the 2 date that the lawsuit was filed. 3 A. So that may be indicia. That would be 4 indicia of a potential issue with fraudulent 5 documents being used by employees, but what it 6 is not equated to is knowledge of that issue. 7 Do you see what I'm -- There's a difference. 8 Q. They would know it now, though, wouldn't 9 they? 10 A. Currently, after that information was 11 provided? 12 Q. Yeah. 13 A. That would -- That would be -- That 14 would be a red flag, yes. 15 Q. And then were you aware that there were 16 six employees who were employed at the time of 17 the article and are still employed at NuStar? 18 A. At the time of the article? 19 Q. Yeah. In other words, they were -- 20 A. In what reference? 21 Q. They were hired before the article was 22 published in September of '18 and are still 23 employees there. Were you aware of that? 24 A. I think I did see a reference to that. 25 Q. Did you know that they've been deposed?</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. Do you -- Are you aware that there was 2 a process in the course of this litigation 3 where through court order and discovery we, the 4 defendants, had plaintiffs identify their 5 employees and the information on their W-4s and 6 then had Social Security Administration verify 7 whether the names matched the Social Security 8 numbers? 9 A. Yeah, I did see a reference to that in -- 10 in one of the reports, I believe, saw a reference 11 to that, and I recall that there was a significant 12 percentage that did not match. 13 You know, my report focuses on what 14 impact that has on the analysis of constructive 15 knowledge, and that's why I'm saying it does not. 16 Q. You're saying it wouldn't be a factor at 17 all? 18 A. That -- Well, first of all, that 19 information, my understanding, and correct me if 20 I'm wrong, but my understanding is that that 21 information was done after the litigation had 22 been filed. Is that accurate? So the employer 23 was not on notice of that issue during the 24 pendency of employment; correct? 25 Q. You're correct in that that process was</p>	<p style="text-align: right;">Page 177</p> <p>1 A. I have not reviewed their depositions, 2 so -- 3 Q. Did you know that they were deposed? 4 A. I think I did. I think I was informed 5 that there may have -- there may have been 6 depositions of them, but I don't know if that -- 7 I did not -- did not review their transcripts 8 or -- no, I did not review their transcripts. 9 Q. Were you aware that the court in this 10 case, the civil case, actually took the step of 11 appointing them criminal defense counsel? Did 12 you know that? 13 MR. BISS: Object to the form. 14 A. I did not know that, but that is very -- 15 that's very typical in civil litigation that 16 involves things like this because a lot of -- 17 because you're asking individuals to potentially 18 make statements against their own interest in 19 relation to alienage, manner of entry. 20 And so, I mean, I've represented 21 companies where -- and that's just -- that's 22 fairly standard when you're going to be asking 23 employees about potentially incriminating 24 information. 25 Q. And so were you aware that all six of</p>

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<p style="text-align: right;">Page 178</p> <p>1 those employees asserted their Fifth Amendment 2 privilege with respect to any questions regarding 3 where they work or their documents or filling out 4 I-9s? 5 A. On advice of their counsel? 6 Q. Correct. 7 A. I wasn't aware of that; but, again, I'm 8 aware generally that that's a pretty common 9 practice. 10 Q. What does that mean to you when somebody 11 asserts the Fifth Amendment through the advice of 12 their counsel? 13 A. I really don't draw any inference from 14 it other than they're acting on the advice of 15 counsel. I mean, I don't know that you can draw 16 a negative inference from that, but there's a 17 lot of -- there are a lot of potential reasons 18 that a foreign-born worker would want to assert 19 that in that type of a -- in that context. 20 Q. What do you -- 21 A. Including protection of family members, 22 including protection of -- I mean, there's just 23 a lot of reasons why workers in that context 24 would not want to speak much. 25 Q. Are you aware that you can only assert</p>	<p style="text-align: right;">Page 180</p> <p>1 So I think that's very typical 2 that that advice would be given because here's 3 the other thing: Information that is elicited 4 from people in those circumstances can impact 5 their ability to obtain benefits based on the 6 date of their entry and things. 7 That necessarily wouldn't fall 8 under Fifth Amendment, but there's just a lot of 9 reasons why there's a real protection of that 10 information. Because, for example, cancellation 11 of removal, okay, cancellation of removal requires 12 ten years of presence in the United States. 13 So there's -- there's timing 14 elements to a lot of benefits that are available 15 to workers; and so manner of entry, time of 16 entry, and alienage in the immigration world are 17 very much protected pieces of information, if 18 that makes sense. 19 Q. Right, but not protected by the Fifth 20 Amendment. 21 A. Not necessarily, unless there was some -- 22 Q. Not at all. 23 A. Right. 24 Q. Right? 25 A. Right. Right.</p>
<p style="text-align: right;">Page 179</p> <p>1 the Fifth Amendment privilege to protect 2 yourself? 3 A. Oh, absolutely, but what I'm just 4 saying, in general, there's a real -- in this -- 5 in the population that works in, you know, ag, 6 construction, there's a real -- anytime there's 7 a legal proceeding there's a real, real sense of 8 insecurity. 9 Q. And are you aware that you can only 10 assert the Fifth Amendment privilege if you 11 believe the answer to the question would tend to 12 incriminate you? 13 A. I'm aware of that. 14 Q. And do you think it would be ethical 15 for a lawyer, especially a criminal defense 16 lawyer, who presumably knows what they're doing, 17 to advise their client to assert the Fifth 18 Amendment privilege for any other reason? 19 MR. BISS: Object to the form. 20 A. You know, I would obviously be 21 speculating; but I would just say, in general, I 22 think Padilla versus Kentucky advises criminal 23 defense attorneys to be real careful with making 24 sure they advise clients on immigration 25 consequences.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. And so to advise a client to assert his 2 Fifth Amendment privilege, you have to believe 3 that that client -- client's answer would tend 4 to expose them to a violation of criminal law. 5 Isn't that fair? 6 A. I think -- 7 MR. BISS: Object to the form. 8 A. I think that would be fair. 9 Q. And so I'm going to show you what's 10 been marked as Exhibit 102, and this is the 11 transcript of the deposition of [REDACTED] 12 [REDACTED] 13 And I know, sir, that this is the 14 first time you've seen this, so I want to -- 15 take your time, as much time as you need and 16 review it. Okay? 17 A. I've reviewed it. It's pretty short. 18 Q. And [REDACTED] is represented 19 by an attorney named J.P. Greer here. Is that 20 fair? 21 A. I see that. 22 Q. And he is asserting his Fifth Amendment 23 privilege with respect to pretty much every 24 question that relates to his employment. Is 25 that fair?</p>

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<p style="text-align: right;">Page 182</p> <p>1 A. It appears that way, yes.</p> <p>2 Q. For example, I asked him, "Do you have</p> <p>3 any identification?" He invokes his right to</p> <p>4 remain silent. "Where do you work?" He invokes</p> <p>5 his right to remain silent. I asked him if he's</p> <p>6 a citizen, and he invokes his right to remain</p> <p>7 silent.</p> <p>8 Likewise, "Are you legally</p> <p>9 authorized to work in the United States?"</p> <p>10 "I invoke my right to remain</p> <p>11 silent."</p> <p>12 "Have you ever had a Social</p> <p>13 Security card?" He invokes. Same for a green</p> <p>14 card.</p> <p>15 What could this possibly mean</p> <p>16 other than [REDACTED] is not legally</p> <p>17 authorized to work in the United States?</p> <p>18 A. I'm just --</p> <p>19 MR. BISS: Object to the form.</p> <p>20 A. Yeah, I'm not sure -- I'm not sure what</p> <p>21 the inference would be. It definitely means that</p> <p>22 he felt like the answers could be incriminating.</p> <p>23 Q. And are you aware of any situation where,</p> <p>24 for example, the question, "Are you legally</p> <p>25 authorized to work in the United States?" and he</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. BISS: Object to --</p> <p>2 Q. -- other reason besides that --</p> <p>3 MR. BISS: Object to the form,</p> <p>4 asked and answered.</p> <p>5 Q. -- that he could be asserting his Fifth</p> <p>6 Amendment privilege?</p> <p>7 A. No. I mean, I'm not comfortable</p> <p>8 speculating as to why he invoked it, and he was</p> <p>9 operating under advice of counsel.</p> <p>10 Q. And I can show you -- I will just give</p> <p>11 to you for your reference, if you want to see</p> <p>12 them, but I'll represent to you that the other</p> <p>13 five all had the same answers.</p> <p>14 A. Okay.</p> <p>15 Q. And I'll give you copies in case on a</p> <p>16 break or something you want to see it. Okay?</p> <p>17 And they're going to be Exhibits 103, 104, 105,</p> <p>18 106, and 107.</p> <p>19 A. I have those. Thank you.</p> <p>20 Q. Okay. Would knowing what these</p> <p>21 transcripts say have affected your opinions in</p> <p>22 your report?</p> <p>23 A. You know, not -- not likely in the -- and</p> <p>24 here's -- here's essentially why: I understand</p> <p>25 that these were statements or depositions that</p>
<p style="text-align: right;">Page 183</p> <p>1 asserts his Fifth Amendment privilege on the</p> <p>2 advice of counsel, is there anything that can</p> <p>3 mean other than he is not authorized to work in</p> <p>4 the United States and cannot answer that</p> <p>5 question?</p> <p>6 A. I'm -- I'm --</p> <p>7 MR. BISS: Object to the form.</p> <p>8 A. Yeah, I'm not sure what the inference</p> <p>9 would be legally, other than, you know, he did</p> <p>10 not want to answer that question on advice of</p> <p>11 counsel. I mean, that --</p> <p>12 Q. Right.</p> <p>13 A. You know, I mean, I think the -- the --</p> <p>14 Q. Can you think of anything?</p> <p>15 MR. BISS: Object to the form.</p> <p>16 A. That --</p> <p>17 Q. Can you think of anything other than</p> <p>18 knowing what we know, what we've established</p> <p>19 about what the Fifth Amendment protects and what</p> <p>20 it doesn't protect and an attorney's obligation</p> <p>21 to advise his client, especially one who knows</p> <p>22 what they're doing, can you think of any reason</p> <p>23 other than the answer to that question would</p> <p>24 have been, "No, I'm not authorized to work in</p> <p>25 the United States"? Can you think of any --</p>	<p style="text-align: right;">Page 185</p> <p>1 were taken in the context of the litigation. I</p> <p>2 mean, I would have needed -- for it to impact</p> <p>3 any -- you know, any of my opinions -- and if</p> <p>4 you look at my opinions, they're in relation to</p> <p>5 standards and, you know, some of the statements</p> <p>6 that were relied upon or data or documents that</p> <p>7 were relied upon by Mr. Arnold and Mr. Martin.</p> <p>8 This, to me, statements by an</p> <p>9 employee under oath taking The Fifth and in the</p> <p>10 context of a deposition, I would have needed to</p> <p>11 know whether and when the employer, if at all,</p> <p>12 became aware of those statements in order to</p> <p>13 give an opinion as to whether that would raise</p> <p>14 to the level of constructive knowledge.</p> <p>15 My -- You know, those are</p> <p>16 elements of that, of that inquiry, right, is --</p> <p>17 is when and how and if there was knowledge on</p> <p>18 the part of the employer about those statements,</p> <p>19 and that was not -- you know, that wasn't part</p> <p>20 of my report.</p> <p>21 Q. And I'll represent to you, and it's</p> <p>22 apparent on each transcript, Steve Biss was</p> <p>23 present at all those depositions, and you know</p> <p>24 Mr. Biss to represent NuStar in this case; is</p> <p>25 that correct?</p>

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<p style="text-align: right;">Page 186</p> <p>1 A. That's my understanding, yes.</p> <p>2 Q. In addition to Mr. Biss being present,</p> <p>3 NuStar hired a separate translator to be there</p> <p>4 and was present for all those depositions, and</p> <p>5 she makes an appearance or identifies herself</p> <p>6 for the record in each of those transcripts.</p> <p>7 So, again, when we take a break, you can review</p> <p>8 them.</p> <p>9 And so -- And I'll come back and</p> <p>10 ask you later, but one of the things I want to</p> <p>11 ask you about is, could that have impacted the</p> <p>12 opinions in your report?</p> <p>13 A. I mean, not likely, because I'm</p> <p>14 analyzing what -- you know, from an I-9</p> <p>15 perspective what the employer had at the time.</p> <p>16 Now, where you're -- where that</p> <p>17 could potentially become relevant to some of my</p> <p>18 opinions is in relation to how deposition</p> <p>19 testimony in the context of a litigation could</p> <p>20 somehow be imputed to be constructive knowledge</p> <p>21 to the employer.</p> <p>22 That's how it would have impacted,</p> <p>23 you know, and likely I would have -- you know,</p> <p>24 my opinion with regard to that would be that this</p> <p>25 would be further -- further indicia of some of</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Okay. So switch gears a little bit.</p> <p>2 How are you doing? Do you need a break or --</p> <p>3 A. No, I'm fine.</p> <p>4 Q. Okay. We'll keep going. We've got</p> <p>5 about 25 minutes left of video here. We'll use</p> <p>6 as much of that as we can and keep plugging along</p> <p>7 here.</p> <p>8 So the -- I want to talk to you</p> <p>9 about NuStar in particular now. First, we already</p> <p>10 talked about you reviewed Claude Arnold's report;</p> <p>11 is that correct?</p> <p>12 A. I did.</p> <p>13 Q. Did you review our expert report,</p> <p>14 Martin's report?</p> <p>15 A. I did, though I focused, you know,</p> <p>16 mainly on Mr. Arnold's report. Mr. Martin's</p> <p>17 report seemed to rely on a lot of data, on</p> <p>18 studies and was kind of industry-oriented, but I</p> <p>19 did review both of them.</p> <p>20 Q. Okay. What I want to do is, I'll put</p> <p>21 in front of you, to be fair, both of those,</p> <p>22 okay, just so you have them.</p> <p>23 A. Sure.</p> <p>24 Q. And so let me show you what's been</p> <p>25 marked as Exhibit 98, which is the defense</p>
<p style="text-align: right;">Page 187</p> <p>1 those factors that would be considered.</p> <p>2 Q. Did you review all of the I-9s and</p> <p>3 employee documents in this case?</p> <p>4 A. I reviewed most of them quickly. I</p> <p>5 looked at -- You know, I paid particular attention</p> <p>6 to the ones that were highlighted in the -- in the</p> <p>7 defendants' experts' reports.</p> <p>8 Q. And so did you look at each of them? I</p> <p>9 mean, did you actually review each of the I-9s?</p> <p>10 A. I did review them. I didn't review the</p> <p>11 entirety of them. I reviewed the ones that were</p> <p>12 particularly relied upon by Mr. Arnold.</p> <p>13 Q. Okay. So you reviewed a subset of them.</p> <p>14 Is that fair?</p> <p>15 A. Well, yeah, I quickly looked at</p> <p>16 everything that I had as far as the I-9s go; but</p> <p>17 those I looked at, you know, because I wanted to</p> <p>18 see exactly why Mr. Arnold was drawing certain</p> <p>19 conclusions and things, so I -- but, in general,</p> <p>20 I reviewed enough to understand what the company's</p> <p>21 compliance protocol was with regard to I-9s.</p> <p>22 Q. And so you didn't do the same procedure,</p> <p>23 for example, if you were doing an audit for an</p> <p>24 employer. You didn't do the same --</p> <p>25 A. No, I did not do an I-9 audit here.</p>	<p style="text-align: right;">Page 189</p> <p>1 expert report of Philip Martin, and Exhibit 99,</p> <p>2 which is defense expert report of Claude Arnold.</p> <p>3 And then here's 98.</p> <p>4 And so first I want to ask you</p> <p>5 about the agriculture industry. We talked about</p> <p>6 this, but I think both Mr. Arnold and Martin</p> <p>7 reference that there's a -- you know, I think</p> <p>8 the way Arnold describes it is a significant</p> <p>9 percentage of employees in the agriculture</p> <p>10 industry are not authorized to work in the</p> <p>11 United States.</p> <p>12 Would you agree with that?</p> <p>13 A. Can you repeat that?</p> <p>14 Q. And this may be Martin, too, but would</p> <p>15 you agree that a significant percentage of</p> <p>16 employees in the agricultural industry are not</p> <p>17 authorized to work in the United States?</p> <p>18 A. I mean, I don't know how you --</p> <p>19 MR. BISS: Object to the form.</p> <p>20 A. I don't know how you would define</p> <p>21 significant percentage. I'd probably disagree</p> <p>22 with it to the extent you define it beyond 10</p> <p>23 percent.</p> <p>24 The studies that I've seen</p> <p>25 indicate that, you know, there's somewhere</p>

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<p style="text-align: right;">Page 190</p> <p>1 between 10 and 13 percent of -- of the workforce, 2 you know, may have presented fraudulent documents 3 to obtain employment in agriculture or farming or 4 food or forestry. 5 So, you know, I don't know what 6 significant would mean, but I would say -- I 7 will just say that in the reports that I've 8 reviewed on that, ag, farming, food, forestry 9 are typically at the higher end of the industry 10 spectrum. 11 Q. So ag would be similar to crop farms 12 and things of that nature and that issue? 13 A. Right. 14 Q. And so I believe it's on page 5 of 15 Martin's report. Top of page 5, paragraph 2, 16 he states that the United States Department of 17 Labor's National Agricultural Worker Survey 18 finds that most of the hired workers on U.S. 19 crop farms were born abroad, usually in Mexico, 20 and that most foreign-born farm workers are not 21 authorized to work in the U.S. The share of 22 foreign-born workers on U.S. crop farms averaged 23 70 percent over the past decade, and 70 percent 24 of these foreign-born workers were unauthorized, 25 making 49 percent of all U.S. crop workers</p>	<p style="text-align: right;">Page 192</p> <p>1 NuStar is in the agriculture industry; right? 2 It's a dairy farm? 3 A. That is correct. 4 Q. And you're aware that NuStar did not 5 use E-Verify; is that correct? 6 A. I am. 7 Q. Did you review the deposition of Anthony 8 Nunes, III? 9 A. I did briefly review that. 10 Q. Were you able to, you know, review every 11 page of it and read all of it? 12 A. I mean, I don't have it memorized, but 13 I did -- I did actually get through it. I think 14 it was, you know, 423 pages or something, but I 15 did -- I did review it. 16 Q. And so I will -- I'll show you that 17 deposition, just so you have it, because I'm 18 going to ask you about certain pages. 19 And so let me show you what's 20 been marked as Defense Exhibit 96, which is the 21 30(b)(6) deposition of NuStar, specifically, 22 Anthony Nunes, III. 23 And so are you -- and are you 24 aware that in his deposition Mr. Nunes described 25 the protocol for what NuStar does with respect</p>
<p style="text-align: right;">Page 191</p> <p>1 unauthorized. The survey covers only workers 2 employed on crop farms, but the characteristics 3 of workers employed on livestock farms are 4 similar. 5 Would you have any reason to 6 disagree with Martin's statement there? 7 MR. BISS: Object to the form. 8 A. As to a recitation of what -- what that 9 survey says, I wouldn't have any -- any reason 10 to think that he misstated what the survey says. 11 I'm -- Just having practiced in this area for, 12 you know, 15 years, the -- the data -- the data 13 is only worth the veracity of what you're getting. 14 And so there's -- I've seen -- I 15 mean, I've literally seen studies that have said 16 that it's 7 percent and -- you know, or 11 percent. 17 I've seen 13 percent. 18 In general, I will agree that the 19 agriculture industry is usually at the highest end 20 of the spectrum when it comes to unauthorized 21 workers, or more so the use of fraudulent documents 22 to obtain employment. 23 Q. It's an issue to be aware of; right? 24 A. Oh, absolutely. 25 Q. And you're aware -- And, of course,</p>	<p style="text-align: right;">Page 193</p> <p>1 to filling out I-9 forms? 2 A. Yeah, I recall reviewing that. 3 Q. And that he, Mr. Nunes, was the one who 4 reviewed the IDs? 5 A. I do recall that. 6 Q. Do you recall what -- how he described 7 his -- what NuStar's protocol was for reviewing 8 IDs and filling out I-9 forms? 9 A. I recall that -- And you can point me 10 to it in here if you'd like, but I recall that 11 he essentially said that he reviewed documents 12 and would either think to himself or say, yep, 13 that's what I -- that's what I needed or that's 14 what we need; and then that information would be 15 passed, I believe, on to Lori, Lori Nunes. 16 And, you know, as noted in -- as 17 noted in my report, there are -- there are I-9 18 compliance issues with that protocol, so -- and 19 as I also cited, poor I-9 compliance does not 20 equate to knowledge. 21 So, you know, in general, I think 22 that there were significant I-9 compliance issues, 23 and I -- and that was kind of what I gathered from 24 reading this deposition transcript. 25 Q. And so fair to say, then, that he,</p>

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<p style="text-align: right;">Page 194</p> <p>1 Mr. Nunes, does not have an adequate protocol 2 for filling out the I-9 forms or reviewing IDs. 3 Is that fair? 4 A. Well, no, the -- 5 MR. BISS: Object to the form. 6 A. I mean, the actual review part didn't -- 7 didn't necessarily concern me. It was more the -- 8 I was concerned that Ms. Nunes, I believe, was 9 signing Section 2 and without indicating she was 10 signing on his behalf or something like that. 11 The individual who reviews the 12 documents should be the individual that is 13 signing the certification in Section 2, so that 14 was the concern. 15 The level of review was typical 16 of what the level of review is in employers all 17 over the United States, so that part -- his 18 testimony kind of concerning that part didn't -- 19 didn't necessarily concern me. 20 The review of the documents and 21 the -- you know, that part was, I think, pretty 22 typical. I mean, I think if you deposed 100 HR 23 professionals, they would probably say we look 24 at it, it's a driver's license, it's a Social 25 Security card, we input the information, and</p>	<p style="text-align: right;">Page 196</p> <p>1 PACER research? 2 That's just not the requirement. 3 The requirement is you look at the document. If 4 it appears on its face to be genuine and relate 5 to the employee, you fill in the information and 6 you move on. That's what employers do all 7 through the -- all throughout the United States. 8 I just -- I guess what I'm not 9 getting is -- what I'm not understanding is if 10 you're asking -- if you're asking that there 11 should be additional steps taken as part of the 12 review, I don't think there is. 13 Q. What do you think the chances are that a 14 dairy farm in northwest Iowa over the last dozen 15 or more years has never ever been presented with 16 a fake ID? 17 A. Oh, I think -- 18 MR. BISS: Object to the form. 19 A. I mean, if I was to speculate, I would 20 say there's minimal chances, if not zero, that 21 they wouldn't have at least at some point been 22 presented with that. 23 Now, whether the employer would 24 know that it was fraudulent or fake, that's a 25 completely different inquiry. Whether --</p>
<p style="text-align: right;">Page 195</p> <p>1 we're done with the I-9. That's -- That's the 2 review. 3 Q. Right, but that doesn't mean that that 4 makes it compliant; correct? 5 A. No, I think it does. As long as you -- 6 as long as you -- as long as you make the 7 determination that the documents are genuine and 8 reasonably appear to relate to the employee named 9 in front of you, then -- then the review segment 10 of that I think is compliant. Now, the actual 11 completion of the I-9 they had real issues with. 12 Q. Right. But I just want to be clear 13 because I think we talked about two different 14 things. 15 Just looking at the document to 16 say, yeah, that's the driver's license, that's 17 the Social Security number and writing it down, 18 that does not constitute the review that is 19 required; is that correct? 20 A. It does. No, I disagree. It does. 21 Q. You don't have to see if it appears to 22 be genuine? 23 A. In what way? Are you -- Are you saying 24 that employers should be bending it, getting 25 black lights out, doing Google research, doing</p>	<p style="text-align: right;">Page 197</p> <p>1 Whether it happened and they were indeed 2 presented that, that I would say is -- 3 Q. What do you think the chances are that 4 over the last dozen years NuStar was never 5 presented with a fake ID that they should have 6 known was fake? 7 A. The only -- 8 MR. BISS: Object to the form. 9 THE WITNESS: Sorry. 10 A. The only way I can answer that question 11 is to look at the documents that Mr. Arnold, in 12 his report, seemed to think stood out as -- as 13 the brightest examples of fake documents. 14 And I don't think -- I don't 15 think he -- I think he is failing to understand 16 the inquiry that employers are required to make, 17 and it's a reasonable employer in the situation 18 of a dairy farmer. They're not -- They're not 19 federal agents. 20 And so, you know, it's just -- 21 that's a very tough question to answer. I 22 think -- Because it's so fact-based. The I-9s 23 that I saw that Mr. Arnold relied on, particularly 24 where he called out the fonts and things of that 25 nature, that to me is not an inquiry that employers</p>

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<p style="text-align: right;">Page 198</p> <p>1 are required to make as far as a judging fonts 2 against other fonts and things of that nature. 3 I think that's a dangerous slope for employers 4 to go down. 5 Q. Let me -- Let me ask a question. 6 A. Sure. 7 Q. Were you aware that Mr. Nunes testified 8 that he has never rejected an applicant based on 9 a review of their ID? 10 A. I think -- I did see that, and I saw 11 that in something else, I think, maybe 12 Mr. Arnold's report. 13 I would like to tell you that's 14 atypical, but in this area it's just not atypical 15 because employers are so frightened of coming 16 afoul or running afoul of that antidiscrimination 17 standpoint, that unless they're rejecting based 18 on E-Verify, most employers do not reject. 19 Q. And you think that's all they're 20 concerned with? I mean, come on, you've been a 21 government attorney. You think that's all 22 they're concerned with? 23 A. Oh, no, I think -- 24 MR. BISS: Object to the form. 25 A. I absolutely think there's different</p>	<p style="text-align: right;">Page 200</p> <p>1 MR. BISS: Object to the form. 2 A. I answered that, and I said I don't 3 think it is odd nor do I think it's atypical of 4 business owners or HR departments to reject IDs. 5 They're looking for two things. 6 Is this a -- Is this on the list of acceptable 7 documents? Yes. Is there anything about it 8 that is glaringly or blatant -- blatantly not 9 genuine? If they can -- If they cross that 10 threshold, then they're not going to reject. 11 Q. And so the attestation actually says 12 examination; right? You're supposed to examine 13 the ID? 14 A. It is an examination, which -- 15 Q. Right. 16 A. And that's actually -- 17 Q. And what does that constitute, though? 18 A. A physical examination is what the law 19 says on that. 20 Q. Right. 21 A. Because what you can't do is you can't 22 look at them via Skype or FaceTime. The 23 examination component relates to a physical, 24 tactile review of the document. 25 Q. For --</p>
<p style="text-align: right;">Page 199</p> <p>1 elements, including the ability to find workers. 2 I think that's -- And this isn't specific to 3 NuStar. This is specific to all employers. I 4 think there's an incentive to be able to hire 5 for sure because of, you know, labor shortages 6 and things of that nature. So, yeah, I think -- 7 Q. Right. 8 A. -- there's other factors. 9 Q. I know, but, I mean, you've mentioned a 10 few times that, well, you know, other employers 11 do this, other employers do that. 12 Fair to say that there's employers 13 out there who knowingly hire undocumented workers? 14 A. Oh, yeah. I mean, I think those -- those 15 charges have been established against a lot of 16 employers. 17 Q. Right. And so that is one factor for 18 some employers, that they don't scrutinize IDs 19 because they want to be able to hire somebody 20 who is undocumented. 21 A. That's a factor. Absolutely. 22 Q. And doesn't it seem a little odd that 23 Mr. Nunes has been reviewing IDs for 12 years and 24 has never come across one that he thought was 25 fake?</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Now, that's -- 2 Q. For what purpose? 3 A. To determine the authenticity, the 4 authenticity, the genuine nature of it, the -- 5 and that's actually -- just so we're clear, that's 6 changed a little bit. In the post-COVID rule, 7 they're -- they are allowing some electronic 8 review of I-9s now. 9 Q. You can ask somebody if you're authorized 10 to work in the United States; correct? 11 A. Yes, that's a permissible inquiry. 12 I mean, by presenting them the I-9, you're 13 effectively asking them that. 14 Q. Right. 15 A. By making them complete the I-9, that's 16 the inquiry. 17 Q. Right. And then -- And you saw I also 18 asked all the -- all the six employees, anyway, 19 if they were authorized to work in the United 20 States, right, and they asserted their Fifth 21 Amendment privilege? 22 A. I saw that. I saw that question outside 23 the context of their application for employment. 24 I saw it in the context of a deposition, correct. 25 MR. KLINEFELDT: Okay. So let's --</p>

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<p style="text-align: right;">Page 202</p> <p>1 Well, we've got about eight minutes here. I'm 2 going to move to asking you about Claude Arnold's 3 report. 4 THE WITNESS: Okay. 5 MR. KLINEFELDT: But why don't we 6 take a break here because we've got eight 7 minutes of video, and we'll take five minutes. 8 Is that okay? 9 THE WITNESS: That's fine. 10 MR. KLINEFELDT: Okay. 11 THE VIDEOGRAPHER: We are going 12 off the record. This is the end of Media Unit 3. 13 The time is 1:57. 14 (A recess was taken.) 15 THE VIDEOGRAPHER: We are back on 16 the record. This is the beginning of Media Unit 17 Number 4. The time is 2:05. 18 Q. Mr. Samson, I think when we left off, 19 we were talking about NuStar's protocol for 20 reviewing IDs and filling out I-9s, and I believe 21 you said that you've clearly reviewed our expert's 22 report, Claude Arnold's report; is that correct? 23 A. I have, yes. 24 Q. And I want to draw your attention to 25 Mr. Arnold's review of some of the documents in</p>	<p style="text-align: right;">Page 204</p> <p>1 that would be substantive violations on 289 of 2 them? 3 A. Well, again, potentially. I mean, 4 you're -- what you're -- what you're wading into 5 is retention period and breadth or scope of audit. 6 So, in general, failure to properly 7 or timely complete Section 2 is a substantive 8 violation. 9 Q. And so -- And I understand there may be 10 an issue with -- I'm assuming when ICE goes to 11 conduct an audit, they don't go back to every 12 record you ever kept; right? 13 A. They can't. There's a retention period. 14 Q. And so I understand that there's 15 probably a difference between what ICE would 16 actually do in terms of assessing fines and what 17 a substantive violation may be. 18 In other words, you can commit a 19 substantive violation but not be held responsible 20 for it because it's outside of the period of 21 review. Is that fair? 22 A. That's fair. And -- That's fair. 23 Q. And so aside from the retention period 24 and that we're looking back -- further back than 25 ICE would actually look, but 289 out of the 309</p>
<p style="text-align: right;">Page 203</p> <p>1 this case. 2 So in his report he states that 3 he has reviewed the I-9s and that he determined 4 that out of 309 I-9 forms provided by NuStar, 5 that NuStar did not complete Section 2 on 289 of 6 them. 7 Do you agree with that assessment? 8 A. I think the issue isn't that they didn't 9 complete Section 2. They didn't fully complete 10 Section 2. And, also, I think there was an issue 11 with timeliness. 12 So in that regard I believe 13 Section 2 was -- was completed at a later date. 14 Is that -- That was my -- my understanding, so 15 you would be looking at -- so the company would 16 be -- you know, essentially, if there was an 17 untimely completion of Section 2, that would be 18 a substantive violation. 19 Q. And -- 20 A. Or a partial completion, that would be 21 a substantive violation. 22 Q. And so I'm at page 17 of -- 23 A. Okay. 24 Q. -- Mr. Arnold's report. And so fair to 25 say, then, that that would be -- out of 309 forms,</p>	<p style="text-align: right;">Page 205</p> <p>1 I-9 forms provided by NuStar did not fully and 2 timely complete Section 2 and therefore would 3 have committed substantive violations with 4 respect to all of those? 5 A. That's -- I mean, yeah, that's accurate, 6 that those would be substantive violations, and 7 that's -- where you see the same mistake being 8 made over and over on I-9s, we see that a lot in 9 this -- in this area because employee -- employers 10 are not going to correct a compliance issue until 11 it's been brought to their attention that it's a 12 compliance issue. 13 And so, you know, ICE sees that a 14 lot, I see it a lot in my practice where the same 15 mistake. So at some point, you know, NuStar was 16 under the impression that all they had to do was 17 collect the documents. And so, yeah, I mean, 18 that error that Mr. Arnold notes is a substantive 19 violation that repeated itself, it appears, for 20 many employees. 21 Q. And Mr. Arnold also notes that 208 out 22 of these 309 I-9 forms provided by NuStar are 23 I-9s where NuStar also did not sign and/or date 24 the certification in Section 2. 25 Do you agree with that?</p>

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<p style="text-align: right;">Page 206</p> <p>1 A. Yeah. Failure to sign and date 2 Section 2 is a substantive violation that has 3 been deemed to be a serious violation by OCAHO. 4 Again, we're in the context of 5 that paperwork violation realm by -- which is 6 what, you know, Mr. -- Mr. Arnold is identifying 7 paperwork violations, substantive paperwork 8 violations. 9 Q. But you would agree with his conclusion 10 that 208 of those I-9s NuStar did not sign and/or 11 date the certification in Section 2? 12 A. What page are you looking at? 13 Q. Still page 17. It's kind of the -- 14 A. Yeah, and I don't have any reason to 15 dispute that. 16 Q. Okay. 17 A. That he did that math. I just want to -- 18 Q. But do you agree with his math? 19 A. Yeah, I don't have any reason to disagree 20 with his number calculation. 21 Q. And based on your review, how many of the 22 309 I-9s were completed timely and correctly? 23 A. Well, again, I didn't complete a full 24 I-9 audit on it. What I did was I looked at the 25 I-9s to get a feeling or a sense of their general</p>	<p style="text-align: right;">Page 208</p> <p>1 realm here. 2 Q. Would you have any reason to dispute 3 that only four out of 309 were accurate and 4 timely? 5 A. Were perfectly completed on time? 6 Q. I'm not even saying perfectly. I'm 7 just saying that were -- that complied with the 8 regulations. 9 A. No. And, again, I know -- I understand 10 those numbers seem atypical to you. They're 11 just -- they're not in this world. In the world 12 of I-9 compliance, most employers have significant 13 errors, including basic oversight, missing I-9s. 14 Q. And so as a former federal prosecutor, 15 I'll tell you something that I noticed and I 16 want to ask you about. 17 If you can kind of get your I-9 18 out again, you've told me multiple times that, 19 look, failing to sign this as an employer is an 20 administrative violation. 21 A. It's a serious substantive violation. 22 Q. But administrative violation. It could 23 result in a fine; right? 24 A. Yes. 25 Q. Signing it, what I know not to be true,</p>
<p style="text-align: right;">Page 207</p> <p>1 compliance protocol, which I have noted in my 2 report had, you know, serious flaws in the sense 3 that they weren't -- they were not -- like many 4 employers, they were, in spirit, attempting to 5 comply with the verification requirement. In 6 reality, they were not fully completing the I-9s. 7 Q. How many -- Of the 309 I-9s, any idea 8 how many were correct? 9 A. Were perfect? 10 Q. Well, I'm not saying -- they were 11 accurate and timely as the law requires. 12 A. I -- I mean, I didn't -- like, again, I 13 didn't do a full I-9 audit, but I -- from 14 Mr. Arnold's report and from the I-9s that I 15 specifically looked at, a very small percentage 16 were perfect or completely compliant. 17 So in the reality, if ICE were to 18 have initiated an audit, which it didn't, okay, 19 but had it issued an audit, ICE would have likely 20 noted these protocol failures and served them with 21 a -- with a NIF that would have said, you know, 22 these are your substantive paperwork violations, 23 and then -- and so that's -- quite obviously that's 24 a completely different animal from a knowing hire 25 or knowing -- knowing -- we're in the paperwork</p>	<p style="text-align: right;">Page 209</p> <p>1 is a felony; right? 2 A. Right. Signing it -- Signing it when 3 you know it not to be true would be -- would 4 probably carry with it greater consequence. 5 Q. And so if you knew that what you were 6 doing was hiring unauthorized workers, wouldn't 7 it make sense that you take the risk of an 8 administrative fine over a felony conviction? 9 A. I -- I mean, I -- 10 MR. BISS: Object to the form. 11 A. I have -- I mean, I can't speculate as 12 to how you would ever know that motivation 13 because all I can tell you is that the thousands 14 and thousands of I-9s that I've reviewed and 15 audited, the failure to sign is one of the most 16 prevalent. 17 It's a serious violation, but I 18 can't tell you that just because an employer 19 fails to sign Section 2, they're intentionally 20 committing immigration fraud or paperwork fraud 21 or hiring fraud. 22 Q. But it's a factor. It's a factor. 23 A. I don't think it is. 24 Q. Really? 25 A. Not for purposes of knowledge. I don't</p>

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<p style="text-align: right;">Page 210</p> <p>1 think poor I-9 compliance is a factor when it 2 comes to establishing knowledge of an unauthorized 3 worker. 4 It may be a factor in the totality 5 of what you're -- what you're describing, but when 6 you're tasked with supporting a single violation 7 of knowingly continued employment, it is not 8 part of the inquiry as to what their violation 9 percentage is. That's a completely different 10 animal as ICE considers it. 11 Q. Right. And I think maybe we're 12 conflating multiple things. All I'm talking 13 about is, as you're looking for clues, factors, 14 indicia of whether somebody is knowingly hiring 15 unauthorized workers, are you really telling me 16 it wouldn't be relevant to you that they, as a 17 pattern and practice, did not sign the attestation? 18 A. I'm really telling you that. 19 MR. BISS: Object to the form. 20 A. I'm telling you it's -- it's -- it's -- 21 Q. Wouldn't be relevant at all? 22 A. For -- For -- No, I didn't say it wouldn't 23 be relevant, but it's not a -- it's not part of the 24 indicia that would establish a knowledge. 25 It's part of an indicia that</p>	<p style="text-align: right;">Page 212</p> <p>1 The failure to sign Section 2 to me is not 2 evidence of a knowing hire in any way. 3 Q. It doesn't help -- It's completely 4 irrelevant, wouldn't be admissible in court 5 because it's not relevant and it doesn't help to 6 establish in any way a material fact? 7 A. It may be -- 8 MR. BISS: Asked and answered. 9 A. It may be considered by a court in the 10 totality of a -- of a picture, you know, of 11 evidence, including I-213s that show all of that 12 stuff that would actually be relevant, the fact -- 13 that might be like a small factor that would be 14 considered; but, in general, there's just no 15 correlation between a failure to sign Section 2 16 and a knowing -- a knowing hire. 17 There's just -- There's no 18 correlation to it that's ever been established. 19 You couldn't do that. If you would do that, 20 you would be imputing knowledge of unauthorized 21 status to every employer in America because if 22 you went into the drawer of every employer in 23 America and went through their I-9s, I guarantee 24 you you're going to find some unsigned I-9s. 25 Q. Right.</p>
<p style="text-align: right;">Page 211</p> <p>1 would establish a very poor compliance violation 2 percentage; but is a court going to say because 3 a company committed the same paperwork violation 4 over and over and over, that it had knowledge 5 that the corresponding individual associated 6 with that I-9 was unauthorized, no. 7 And that's entirely speculative 8 because there are probably a large percentage of 9 I-9s that have not been signed in the country 10 that relate to completely authorized work, so I 11 don't think you can make that connection 12 logically. 13 Q. Right. And I think -- I think, again, 14 we've gotten out of step with one another. 15 I'm not saying that by itself it 16 establishes anything. What I'm saying is, it 17 would have to be something that you would take 18 into your analysis in terms of whether an 19 employee -- an employer is hiring undocumented 20 employees, wouldn't it? 21 A. Knowingly? 22 MR. BISS: Asked and answered. 23 A. Knowingly hiring? 24 Q. Correct. 25 A. And I'm answering your question again.</p>	<p style="text-align: right;">Page 213</p> <p>1 A. So I don't think you can make that 2 logical leap to say that just because it's an 3 unsigned I-9 that employer has knowledge. 4 Q. Right. And there again I think we're 5 talking past each other. I am in no way saying 6 that just because they didn't sign that 7 attestation, that therefore they have knowledge. 8 What I'm saying is, it's got to 9 be one of the factors you would consider in 10 establishing whether they had knowledge or not, 11 whether they knowingly and intentionally hired 12 undocumented workers. 13 A. I'll give you that it may be -- 14 MR. BISS: Asked and answered. 15 A. It may be part of the totality of the 16 analysis. I'll give you that. 17 Q. Okay. And we've talked about Claude 18 Arnold's analysis. Let's go over now some of the 19 examples that he looked at NuStar prevented -- 20 or presented and we looked at. And so what I'm 21 going to do is, I'm going to show you a series 22 of examples and talk about those. 23 A. Okay. 24 Q. And give me one minute here. 25 Okay. The first example I'm</p>

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<p style="text-align: right;">Page 214</p> <p>1 going to show you is what's been marked as 2 Defendants' Exhibit 20, and this is I-9 3 information that was presented to us for a 4 [REDACTED]. Take your time to 5 look at it. 6 A. Okay. I've looked at it. 7 Q. Okay. Have you seen this I-9 before? 8 A. I looked -- I did look at this one. 9 Q. And so what do you -- And I'm not -- I'm 10 not trying to play gotcha, but what to you appears 11 inaccurate about this, if anything? 12 A. Well, there's various paperwork errors 13 on this. First of all, it appears to have been 14 untimely prepared, okay, based on the date of 15 hire listed in the Section 2 certification. 16 The employee -- I'm sorry, the 17 employer did not fill in List A. He's got a 18 List A document attached, which is the permanent 19 resident card. So, again, it's kind of a gray 20 area as to if you attach the card, whether you 21 actually have to complete the -- filling in the 22 information, but I know ICE would prefer that 23 you do. 24 The documents that are attached 25 are both acceptable. It's a List A, and then</p>	<p style="text-align: right;">Page 216</p> <p>1 United States box; right? 2 A. I mean, it definitely appears like that 3 was what he intended to do; but, again -- 4 Q. And then he presents a permanent 5 resident card. 6 A. Right. 7 Q. Saying that he was -- he was born in 8 Mexico. 9 A. He's a permanent resident. 10 Q. Right? 11 A. Right. 12 Q. And so that's -- 13 A. So there's some ambiguity. 14 Q. That's internally inconsistent; right? 15 A. There's some ambiguity between the 16 attestation and the documents that are attached. 17 That's not atypical because a lot of -- a lot 18 of employees do not know the difference between 19 a noncitizen national and a lawful permanent 20 resident. They don't know the difference 21 between -- 22 Q. But it says permanent resident card, 23 and the box he could have checked was lawful 24 permanent resident. 25 A. Right. These are -- These are issues</p>
<p style="text-align: right;">Page 215</p> <p>1 it's a List C, but you wouldn't need the Social 2 Security card because you've got a List A 3 document. So a permanent resident card is a 4 List A document. 5 And then you obviously have the 6 employee who checked the noncitizen national 7 box. You know, I mean, the check mark is 8 somewhere near the lawful permanent resident 9 box. There's -- There's a whole breadth of 10 regulatory law on the ambiguous attestations. 11 So, you know, I don't -- 12 Q. You think that's ambiguous? 13 A. I mean, personally, the majority of the 14 check mark is within the box; but these are 15 things that auditors -- that ICE auditors are 16 tasked with doing. 17 When they decide whether they're 18 going to bring a violation or treat it as a -- 19 as a substantive violation, they have to make 20 sure that there's not an argument to the counter 21 that that's -- that that's within the third -- 22 you know, intended to be within the third box. 23 You know, these -- this is just part of the 24 analysis. The -- 25 Q. He marks the noncitizen national of the</p>	<p style="text-align: right;">Page 217</p> <p>1 that appear clear to you and me; but if this 2 form is in English and, you know, you're being 3 presented with this form on your first date of 4 employment and -- 5 Q. Well -- 6 A. You know, there's just -- there's lots 7 of things that go into completing these. I 8 don't see -- I don't make any connection between 9 the noncitizen box. It's -- It's -- It's indicia. 10 It's indicia of a potential issue with that 11 List A document; but when you look at it from a 12 reasonable employer, he was -- the employer was 13 presented with a List A document, which satisfies 14 both identity and work authorization. 15 Q. And -- 16 A. But there's -- there's -- 17 Q. Did you see -- 18 A. -- paperwork errors. 19 Q. -- that he initially gets his Social 20 Security number wrong by eight digits -- 21 A. Yeah. So any -- 22 Q. -- and crosses it out? 23 A. Anytime there's corrections made on the 24 face of the I-9, I always recommend that employees 25 or employers initial and date that correction so</p>

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<p style="text-align: right;">Page 218</p> <p>1 that you can tell when it was made. 2 Q. Do they issue Social Security numbers 3 that begin in 9? 4 A. I don't know that a -- that an employer 5 is required to know that. 6 Q. Do you know it? 7 A. I believe they've went up to 8. I 8 don't know it off the top of my head. 9 Q. And so there are no Social -- 10 A. An employer definitely is not required 11 to know. 12 Q. Right. And I'm just asking you what 13 you know. 14 That would not be a correct 15 Social Security number that appears to be 16 initially written down; is that correct? 17 MR. BISS: Object to the form. 18 A. That -- To me, the Social Security 19 number and the digitized -- the digits that are 20 used for that, that's -- employers are not 21 required to know that, nor are they required to 22 keep up to that. They're just required to 23 accept documents that appear genuine on their 24 face. 25 Now, in reality, this is one that</p>	<p style="text-align: right;">Page 220</p> <p>1 like -- like I said earlier, that would likely 2 result in a Notice of Suspect doc letter, but 3 it's just -- 4 Q. Well, Mr. Arnold says that both 5 [REDACTED] permanent resident card and his 6 Social Security cards had a font that's 7 different than genuine cards. 8 Do you agree with that? 9 A. I agree. I agree, but I can only agree 10 with that based on my own knowledge. It's not 11 the standard that -- 12 Q. And, again, I understand. 13 A. It's not the standard that an employer 14 would have the ability to know. I mean, I 15 think there's issues with the font on the Social 16 Security card, but the -- you know, it's -- I 17 mean, Mr. Arnold also went on PACER for this -- 18 for this individual and did a search on PACER. 19 That's not what employers are required to do. 20 Q. And again -- 21 A. That's a true -- 22 Q. -- I want to be clear. I want to be 23 clear. I'm asking you what you know. 24 A. Sure. 25 Q. Let's shelve what an employer should</p>
<p style="text-align: right;">Page 219</p> <p>1 if ICE came in and did an audit and the employer 2 handed this over and then ICE went back to their 3 headquarters and ran the data through, ICE would 4 then probably list this individual on what's 5 called a Notice of Suspect doc letter and say 6 we were unable to verify the authorization of 7 this employee based on the documents that were 8 provided. 9 That's how it would typically 10 play out by the time you get to the conclusion 11 that the person is not authorized. 12 Q. And you had mentioned before, and I'm 13 asking what you know and not what an employer 14 would know -- 15 A. Sure. 16 Q. -- that you can, based on your 17 experience, pretty easily spot fake IDs. 18 Mr. Arnold says that these IDs 19 are fake. What's your opinion? 20 MR. BISS: Object to the form. 21 A. There's indicia of that, but it's just 22 really impossible to know. I mean, there are 23 issues that, to me, having reviewed a lot of 24 these for ICE, these would -- these would stand 25 out as potentially modified documents that would</p>	<p style="text-align: right;">Page 221</p> <p>1 know, and we'll get back to that. Okay? I'm 2 asking you your opinion; and, in your opinion, 3 do you believe that these two documents are 4 genuine? 5 A. I have significant questions with regard 6 to the Social Security card based -- based on the 7 font, but there's only -- I mean, I can't sit here 8 and say that with 100 percent certainty because I 9 don't have access to Homeland Security's databases 10 and things. 11 Q. And so what about the permanent resident 12 card? What about that to you appears suspect? 13 A. Potentially the category for adjustment 14 that led to his green card. I'm not sure of a 15 W26 category. 16 It's just difficult because it's 17 a photocopy as well, but the "Card Expires" font 18 might be different from the resident card, you 19 know, a typical resident card. 20 Q. And so -- 21 A. I mean, as they come, as I've seen 22 them, this permanent resident card is actually, 23 you know, even difficult for me to -- 24 Q. And, again, I'm just asking what you 25 know.</p>

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<p style="text-align: right;">Page 222</p> <p>1 A. But here's the other thing: The back 2 of that permanent resident card is very much 3 consistent with a -- with a permanent resident 4 card, so if you look at the back of it. So that 5 one is -- That one is closer. I think the Social 6 Security card -- 7 Q. Let me -- Let me ask you -- 8 A. You know, based on my -- based on -- 9 Q. We're getting far afoot here. Let me -- 10 A. Yeah. Sure. 11 Q. Let me interrupt you here. 12 The back of that card says United 13 States Department of Justice. Do permanent 14 resident cards say Department of Justice? 15 A. No, they don't, but what I'm saying is, 16 like, in reality, when you're looking at the 17 card itself, it's -- it's pretty consistent with 18 what the back of a permanent resident card looks 19 like. I don't -- I'm not aware of anything that 20 would require an employer to know what actual 21 sub agency issues the cards, but -- 22 Q. Right. And, again, we keep -- I know 23 we're going to go way past 4 o'clock now. 24 A. Well, no, let's stay here. Let's stay 25 here because you asked me about it, so --</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. But this expires in '18, so it would 2 have been -- had to have been issued -- if it 3 was legitimate and it really expired in '18, it 4 would have been issued in 2008; right? 5 A. You know, that's an issue that -- I see 6 that a lot. I believe that there may have used 7 to be 20-year cards, but I don't know that for a 8 fact, but I believe that generally they're 9 ten-year cards. 10 The fact of the matter is, the 11 analysis, the inquiry we're having right now is 12 far above -- 13 Q. Right. I know. 14 A. -- what an employer would ever have to 15 delve into, so I don't know how it's relevant. 16 Q. Right. 17 A. But I'm -- 18 Q. And so let's shelve what an employer 19 would know -- 20 A. No, I got that. 21 Q. -- and just talk about what you, as an 22 expert, know. Okay? 23 A. Sure. 24 Q. And so -- 25 A. I would say, in general, there's a high</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. Right. 2 A. You know, INS was actually part of DOJ 3 before 9/11, so Homeland Security was created -- 4 This card was issued in about '99. Okay? 5 That's when it says. It says a resident since 6 '99. So INS was a different part -- There was 7 no Homeland Security until post-9/11. Homeland 8 Security was created as a result of 9/11, so -- 9 Q. But it says it expires in 2018. 10 A. Right, but you see it says resident 11 since -- 12 Q. Right. 13 A. -- '99. 14 Q. Does that make any sense to you that it 15 had been issued in '99 and expired in '18? 16 A. Well, they're typically -- the "Resident 17 Since," okay, that is when you became a lawful 18 permanent resident. Okay? The length of time a 19 green card is -- is -- varies. You can get 20 ten-year ones. You can get -- I think there's 21 two-year ones. 22 So it depends on how much -- So 23 they -- They reissue, but if -- If -- Even in 24 2020, if I get a permanent resident card, it's 25 going to show "Resident Since."</p>	<p style="text-align: right;">Page 225</p> <p>1 probability that -- that these cards would be 2 flagged by ICE, in the event of an audit, as 3 fraudulent. 4 Q. And that's because this card would have 5 had to have been issued in 2008, and there was 6 no INS in 2008, was there? 7 A. Unless there were 20-year cards back in 8 '99. I don't know that for fact; but, I mean, I 9 think the font on the "Card Expires" to me looks -- 10 looks off. So, yeah, I don't -- and I don't think 11 that that would -- you know, I think it's -- it's 12 suspect. It would be listed as a Notice of Suspect. 13 It would be listed in a Notice of Suspect document 14 letter. 15 Q. Would you have any reason to dispute if 16 we told you that there were never any 20-year 17 cards? 18 A. No. You know, I may have -- I wouldn't 19 dispute that. I'd have to look at that. The 20 cards go back, you know, to the 1930s and things, 21 so I don't know that for a fact that there were 22 20-year cards. 23 Q. And so -- 24 A. That would be something that I would 25 notice, if there was a 20-year gap between a --</p>

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<p style="text-align: right;">Page 226</p> <p>1 but, again --</p> <p>2 Q. Can you think of any reason why</p> <p>3 somebody who was legally authorized to work in</p> <p>4 the United States would present to his employer</p> <p>5 fake documents?</p> <p>6 MR. BISS: Object to the form.</p> <p>7 A. The -- No. No. What I think -- No, I</p> <p>8 can't, really.</p> <p>9 Q. And so if these are fake, then isn't the</p> <p>10 only conclusion that could reasonably be drawn is</p> <p>11 that [REDACTED] is not authorized to work</p> <p>12 in the United States?</p> <p>13 MR. BISS: Object to the form.</p> <p>14 A. I mean, unless his status has changed</p> <p>15 since the time of this. I mean, if -- if --</p> <p>16 which is a possibility. I mean, people's</p> <p>17 statuses can change at any time, and that's --</p> <p>18 you know, so it's hard to really answer that.</p> <p>19 Q. And are you aware that I deposed</p> <p>20 [REDACTED]?</p> <p>21 A. I did -- I think I did make that</p> <p>22 connection.</p> <p>23 Q. And I asked him if he was authorized to</p> <p>24 work in the United States, and he asserted his</p> <p>25 Fifth Amendment privilege.</p>	<p style="text-align: right;">Page 228</p> <p>1 Take your time to look at that.</p> <p>2 Is this one you had reviewed</p> <p>3 before?</p> <p>4 A. Yeah, I've seen this one.</p> <p>5 Q. What strikes you as being problematic</p> <p>6 with this one?</p> <p>7 A. And you're just -- you're asking me for</p> <p>8 my -- for my -- based on my knowledge. I would</p> <p>9 say the font. If we're just looking at the</p> <p>10 documents, I'd say the font on the Social</p> <p>11 Security card is -- is atypical and doesn't --</p> <p>12 doesn't match the fonts that I've typically</p> <p>13 seen.</p> <p>14 Q. And now from an employer perspective,</p> <p>15 if the employer is, like NuStar, keeping copies</p> <p>16 of everyone's Social Security card, that's</p> <p>17 something that they could easily identify; is</p> <p>18 that correct?</p> <p>19 A. Yeah, but --</p> <p>20 MR. BISS: Object to the form.</p> <p>21 A. -- they're not required to do that.</p> <p>22 They're not required to go cross-check fonts</p> <p>23 among other employees' cards. I mean, that --</p> <p>24 would they do that if you were -- if you were --</p> <p>25 would you expect an employer to do that if you</p>
<p style="text-align: right;">Page 227</p> <p>1 Do you remember seeing that?</p> <p>2 A. I saw that was one of the transcripts</p> <p>3 you handed me.</p> <p>4 Q. And so based on all of that, what is</p> <p>5 your opinion about whether [REDACTED] is</p> <p>6 authorized to work in the United States?</p> <p>7 A. And you're just asking --</p> <p>8 MR. BISS: Object to the form.</p> <p>9 Q. I'm just asking --</p> <p>10 MR. BISS: Object to the form.</p> <p>11 A. You're just asking me whether I think</p> <p>12 he's authorized based on the totality of what</p> <p>13 I've reviewed.</p> <p>14 I think it's very likely he's</p> <p>15 not, other than the fact his status could have</p> <p>16 changed and he may actually be authorized, which</p> <p>17 is why you would need a 213 to really do that.</p> <p>18 You'd have to run checks on him to see if he's got</p> <p>19 pending applications in CIS or claims databases.</p> <p>20 So I'm not being difficult, but it's</p> <p>21 hard for me to say with 100 percent certainty he's</p> <p>22 unauthorized.</p> <p>23 Q. Now let's talk about the next one. I'm</p> <p>24 going to show you what's been marked as Defense</p> <p>25 Exhibit 15, which is the I-9 for [REDACTED].</p>	<p style="text-align: right;">Page 229</p> <p>1 presented them with a card? No. Right?</p> <p>2 Because that would be discriminatory in the</p> <p>3 sense if they -- if -- if -- an employer is not</p> <p>4 required to go dig into their drawer of I-9s and</p> <p>5 do a font comparison. It's just -- There's</p> <p>6 nothing that requires them to do that in the</p> <p>7 law, you know.</p> <p>8 Q. Well, let's go through this one, and</p> <p>9 then we'll come back to that.</p> <p>10 A. Sure.</p> <p>11 Q. Okay?</p> <p>12 A. Sure.</p> <p>13 Q. And so [REDACTED], this -- he signed it</p> <p>14 in 2016; right?</p> <p>15 A. Yeah. It's untimely, untimely completed</p> <p>16 because it looks like his employment began in '08.</p> <p>17 So it's untimely completed, which is a substantive</p> <p>18 violation.</p> <p>19 Q. And then we have another noncitizen</p> <p>20 national of the United States; right?</p> <p>21 A. Which that's -- Right. That wouldn't</p> <p>22 characterize that as a violation because the</p> <p>23 violation would be had there not been an</p> <p>24 attestation, so there's actual -- I mean, the</p> <p>25 employer has no control over what the employee</p>

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<p style="text-align: right;">Page 230</p> <p>1 attests to, so that wouldn't be a violation. 2 The main issue is the timeliness here. And then 3 you've got a List B and a List C, which -- 4 Q. But they didn't -- they didn't fill out 5 the information -- 6 A. It comports -- 7 Q. -- fill it out; right? 8 A. Right. And we've talked about how that's 9 a gray area when the documents are attached; but, 10 yeah. No, that would be an issue. And then you've 11 got, you know, potentially this individual would 12 also show up on a Notice of Suspect doc, you know, 13 based on the -- based on the font in the Social 14 Security card. 15 Q. You've got a Social Security number that 16 ends in the 900s; right? 17 A. Uh-huh. 18 Q. Is that right? That's not -- I'm sorry, 19 begins with a 9, and those don't exist; right? 20 A. Yeah, not that I'm aware of. I'm not 21 sure what those have went up to. I actually 22 researched that issue recently in another matter. 23 Q. How long do you think it would take you 24 on Google to figure that out? 25 A. Well, one, I would --</p>	<p style="text-align: right;">Page 232</p> <p>1 employer to look into something if facts warrant 2 it; right? 3 A. Right, if facts warrant it, yes. 4 Q. And so -- 5 A. And if you're comfortable as an employer 6 that doing so, that you would also do so for 7 someone of a different national origin or -- 8 Q. Absolutely. 9 And so this says that [REDACTED] 10 started working at NuStar in 2016; is that correct? 11 A. No. It says he started working there -- 12 Q. I'm sorry. 13 A. -- in 2008. 14 Q. 2008. And that, you know, 2016 is when 15 he signed it, right, and so he had been working 16 there at least since 2016, but it looks like 17 probably since 2008; is that correct? 18 A. That's -- That's what Section 2 says. 19 Q. Okay. And, then, were you aware of 20 where [REDACTED] lives? 21 A. I mean, I recall in the report and, I 22 mean, he even says it in the Section 1 here, 23 that he lives in Sibley, Iowa, and I recall in 24 the report that this individual may have been 25 living in some employee-provided housing. Is</p>
<p style="text-align: right;">Page 231</p> <p>1 MR. BISS: Object to the form. 2 A. I would never advise an employer to do 3 that, to start Google-referencing because, again, 4 would you do that for every employee? Would you 5 do that for your -- for your employee that, you 6 know, speaks perfect English and went to, you 7 know, the local school down -- you just -- once 8 you go down that path as an employer, it's a -- 9 you're committing discrimination. So, no, I 10 would not. 11 A Google search of the Social 12 Security numbers would probably take you about 13 ten minutes, though, to answer your question. 14 Q. You think it would take ten minutes to 15 figure out that Social Security numbers don't 16 start with a 9? 17 A. Yeah. There's a -- 18 MR. BISS: Object to the form. 19 A. There's a site on it that talks about 20 the history of Social Security numbers and where 21 they've used it. So, I don't know, maybe less. 22 Q. And so I think we talked about before 23 that you can't view anything in isolation; 24 right? Everything has got to be fact-based, 25 and you have a reasonable duty of care as an</p>	<p style="text-align: right;">Page 233</p> <p>1 that -- 2 Q. Yeah. 3 A. Is that consistent? 4 Q. Housing owned by a member of the Nunes 5 family and/or NuStar. And the reason why I 6 point that out is, he's providing a California 7 ID that was issued 2018. 8 And so wouldn't it a reasonable for 9 that to cause an employer to say, wait a minute, 10 you're providing me an ID issued in 2018, right, 11 that, you know, I reviewed in 2016, which is kind 12 of a trick, and then on top of that -- 13 MR. BISS: Nick, is there a 14 question coming up? 15 Q. -- you're saying you live in California, 16 but you actually live in my house? I mean, 17 don't you think that would put an employer on 18 reasonable notice that you need to follow up? 19 MR. BISS: Object to the form. 20 A. You know, that -- that one gets really 21 close, and I -- and I agree with you that that 22 issue caused me a lot of pause. 23 I looked at the Aramark case on 24 that; and Aramark, I think, actually addresses a 25 situation where an employer knew the person lived</p>

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<p style="text-align: right;">Page 234</p> <p>1 in the -- in the town or whatever and presented 2 a card, an ID card, from a different state. And 3 I believe Aramark said that did not impute to 4 constructive knowledge. 5 But I agree with you that that's 6 the type of inquiry -- inquiry and that's the 7 type of situation that ICE would likely levy -- 8 you know, in the event of an audit, ICE would 9 perhaps levy, you know, some sort of violation, 10 and then that would be hammered out in litigation, 11 with an ALJ making the ultimate determination as 12 to whether there's constructive knowledge. 13 Q. Right. And let's put aside what ICE 14 would do for now. I'm asking what an employer 15 had a duty to do. 16 And how did this employer review 17 [REDACTED] ID? I mean, it looks like maybe 18 a reverification, but there's no original -- 19 A. No, I -- 20 Q. -- ID. 21 A. I -- 22 Q. But do you see there's like a 23 reverification, 2018? 24 A. Yeah, but I noticed that in quite a few 25 of the I-9s. I think Mr. Nunes signed in the</p>	<p style="text-align: right;">Page 236</p> <p>1 you know, maybe let me look at the font of that 2 Social Security number. I've got other I-9s 3 right here. Geez, you know, let me see if 4 Social Security numbers actually start with 9. 5 You know what, let me Google that address that 6 he says he lives at in California and -- 7 A. I would -- 8 Q. -- find out that that address doesn't 9 exist. 10 A. Yeah, I would never advise an employer 11 to Google. I think -- I think that's dangerous. 12 But what I would advise is for them to have a -- 13 in this situation, if I got called on this one 14 and they said this is what -- this is what we 15 see, I would advise them to do a person-to-person 16 inquiry with the employee and say -- and have them 17 explain to me, as the employer, you know, about 18 the ID card, and then I would advise that they 19 attach a memo that includes the explanation. 20 So I would never ever advise 21 that you go to outside sources to investigate 22 document -- documents that are presented by 23 employees. 24 Q. And I'm glad you say that because I 25 did. I deposited [REDACTED]. He's a very, very</p>
<p style="text-align: right;">Page 235</p> <p>1 wrong line on a lot of them, where he was 2 signing the Section 3 line. So there was no 3 reverification done here. 4 Q. So he's saying he reviewed -- he's 5 attesting under the penalty of perjury that he 6 reviewed the IDs in -- 7 A. Right. He does that -- 8 Q. -- in 2016. 9 A. Right. He does that on -- 10 Q. And this ID -- 11 A. -- January 20. 12 Q. -- was issued in 2018, so how is that -- 13 A. Yeah, this looks like -- this looks like 14 there may have been -- yeah, I mean, this I-9 is 15 replete with errors. 16 Q. And so -- And then if you had a reasonable 17 duty of care to say, hey, wait a minute, that 18 doesn't make sense, right, and I'm not saying that 19 that alone amounts to constructive knowledge, you 20 know, I think it does, but put aside that for now, 21 doesn't it at least cause a reasonable employer to 22 have a duty of care to investigate a little bit 23 further? 24 A. I would agree with that. 25 Q. And that's when you could say, well,</p>	<p style="text-align: right;">Page 237</p> <p>1 nice gentleman. But when I asked him if he was 2 authorized to work in the United States, he 3 asserted his Fifth Amendment privilege. 4 A. Yeah, I saw that. 5 Q. Based on all of that, and let me first 6 start with you, aside from what an employer 7 should or shouldn't know -- 8 A. Sure. 9 Q. -- do you really think [REDACTED] is 10 authorized to work in the United States? 11 MR. BISS: Object to the form. 12 A. Same answer as the last one. Unless his 13 status for some reason has changed, I would say 14 there's a high percentage of likelihood that -- 15 that he is not authorized. 16 Q. And wouldn't you think that an employer 17 should know that [REDACTED] is not authorized 18 to work in the United States -- 19 A. I wouldn't go as -- 20 Q. -- based on this? 21 MR. BISS: Object to the form. 22 A. I wouldn't go as -- 23 MR. BISS: Object to the form. 24 A. -- go as far as saying that. I would 25 say this would put them on -- that, you know,</p>

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<p style="text-align: right;">Page 238</p> <p>1 based on what we've looked at, I would advise 2 that employer to -- follow up with the employer 3 to -- to inquire about all these issues that 4 you've -- that you've brought up. 5 Q. Same question for [REDACTED] 6 that we talked about before. Shouldn't an 7 employer have known that he's not authorized to 8 work in the United States? 9 MR. BISS: Object to the form. 10 A. I don't believe that an employer would 11 be held to that level for purposes of employment 12 verification. And I say that against the backdrop 13 of case law and, you know, regulatory decisions 14 and things of that nature. 15 Q. Let me show you what's been marked as 16 Defendants' Exhibit 21, which is the I-9 for 17 [REDACTED]. Take your time 18 to review that. 19 A. Okay. 20 Q. What jumps out at you from this one as 21 being problematic? 22 A. It appears to me that the alien 23 registration number in Section 1 does not match 24 the lawful permanent resident card. I'm not 25 sure where he pulled -- I'm not sure where the</p>	<p style="text-align: right;">Page 240</p> <p>1 MR. BISS: Object to the form. 2 A. Me personally? 3 Q. You personally. 4 A. No, I don't think that's a legitimate 5 Social Security card. 6 Q. And you have to have a Social Security 7 number to work in the United States; correct? 8 A. No, that's not correct. 9 Q. An employer doesn't have to have a 10 Social Security number for an employee to employ 11 them -- 12 A. I don't believe that's correct. 13 Q. -- and pay them? 14 A. I don't believe that's correct. 15 Q. Would there be any reason you can think 16 of that [REDACTED] would present a fake 17 Social Security card other than he is not legally 18 authorized to work in the United States? 19 MR. BISS: Object to the form. 20 THE WITNESS: Can you read that 21 question? 22 (Requested portion of the record 23 was read.) 24 A. No. I mean, I think he presented the 25 Social Security card in order to meet the</p>
<p style="text-align: right;">Page 239</p> <p>1 employee pulled that number from. It's another 2 untimely completed Section 2. The Social Security 3 card, the digits on the Social Security card are 4 misplaced from where they would typically be. 5 Q. What about the logo being off-center? 6 A. Yeah, that -- Yeah, I mean, that whole 7 thing looks disjointed. The font looks -- 8 Q. Even to a -- Even to an employer, 9 that's -- that's got to be suspect; right? 10 MR. BISS: Object to the form. 11 A. You want me to speak on behalf of all 12 employers in the United States or what do you -- 13 you want me to -- I mean, to me -- 14 Q. You've been talking about the standard -- 15 A. Yeah. 16 Q. -- for what a reasonable employer would 17 know, and so I'm asking you what you think a 18 reasonable employer should think about this 19 Social Security card. 20 A. This card to me -- and it's hard -- it's 21 hard for me to -- to speak on behalf of employers, 22 but this card to me would raise -- raise question, 23 you know, based on a review of it. 24 Q. Do you think there's any way that's 25 legitimate?</p>	<p style="text-align: right;">Page 241</p> <p>1 requirement of producing a List C document. 2 Q. Right. Which if the permanent resident 3 card is real, he actually wouldn't have to do; 4 right? 5 A. Right, because that -- 6 MR. BISS: Object to the form. 7 A. That's a List A. But you see that a 8 lot. You see employees that just kind of dump -- 9 you know, like, present everything they have in 10 their wallet. And so, yeah, but you're correct 11 that the List A is there as well. 12 Q. And so what do you think a reasonable 13 employer should have done when they saw that 14 Social Security card? 15 A. It's -- I mean, I agree the Social 16 Security card is very discombobulated and is so 17 on its face, and so I'm not -- the issue is that 18 you've also got a List A document here that 19 corresponds to what the employee attested to. 20 Okay? So -- 21 Q. Does it? 22 A. Well, I mean, it corresponds to the 23 status. He checked a lawful permanent resident, 24 and he presented a permanent resident card, so 25 there's some correlation there.</p>

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<p style="text-align: right;">Page 242</p> <p>1 Q. But the A numbers are wrong. 2 A. Right, but what I'm saying is that -- 3 I'm saying there's a correlation between the 4 status selected and the card presented. 5 Q. And so -- 6 A. And so what I'm saying is, I -- you 7 know, would a reasonable employer reject a 8 Social Security card? You know, perhaps. I 9 mean, but it's pretty obvious to me, and I think 10 it would be to most HR departments and hiring 11 officials. 12 The permanent resident card would 13 give you further pause as an employer because, 14 you know, you're looking at it and you're like, 15 well, but that's a List A. So, you know, it's 16 just -- 17 Q. What are the problems with the permanent 18 resident card? I'll start by he's been a resident 19 since 2004; right? 20 A. Uh-huh. 21 Q. Why does it say INS A number then? 22 A. Yeah, INS would not have existed as of 23 2004. So, yeah, I mean, that's a discrepancy on 24 its face. 25 Do you know -- I mean, I don't</p>	<p style="text-align: right;">Page 244</p> <p>1 suspect, as an employer, wouldn't I be on notice 2 to say, hey, look, this guy is presenting me 3 with something that clearly appears to be a fake 4 ID, that's a red flag, and I have -- as a 5 reasonable employer, have a duty to look a 6 little further into this; right? Is that fair? 7 A. Based on the Social Security card, I -- 8 Q. Yeah. 9 A. I would think a reasonable employer 10 would have asked more -- you know, perhaps asked 11 questions; but, again, the red herring here is 12 that permanent resident card. I don't think a 13 reasonable employer would identify that permanent 14 resident card as being -- as being fake. 15 Q. Right, but they've already seen that 16 you've presented one fake ID, so now it's different 17 than somebody just presenting a permanent resident 18 card; right? 19 A. Agree. 20 MR. BISS: Object. 21 A. Agree. 22 MR. BISS: Object to the -- Hold 23 on. Object to the form. 24 A. Agree. All of those are fact-based; 25 right?</p>
<p style="text-align: right;">Page 243</p> <p>1 think employers are required to know when 2 agencies were established and abolished and 3 things of that nature. I just don't -- You 4 know, again, I don't think -- We're talking 5 about a lot of things. 6 Mr. Arnold is a very experienced 7 law enforcement officer that -- that did a lot 8 of work in this. He's -- He's pinpointed a lot 9 of issues that -- that I would also pinpoint if 10 I was doing, you know, an analysis; but, in 11 general, would a reasonable employer have hired 12 this person, probably, because he presented a 13 List A document. 14 Q. But -- 15 A. He's established work authorization 16 through the List A document. I mean, it's -- it's 17 really tough to draw that line where -- where an 18 employer is supposed to reject documents. 19 Q. Well, and let's talk about this one a 20 little bit more because it seems to me -- 21 A. Okay. 22 Q. -- this one goes way past it. 23 A. Okay. 24 Q. And so if we walk through the analysis 25 and say, okay, the social security card is</p>	<p style="text-align: right;">Page 245</p> <p>1 Q. Yeah. 2 A. Isn't that a fact-based -- 3 Q. And so -- And here's what I'm getting 4 at, is then you look at the permanent resident 5 card and then say, well, look, let me really look 6 at this, and the first thing you notice is that 7 the A number he provides is not the A number he 8 provides on the I-9; right? 9 A. Yeah. I mean, the -- the digits on the 10 Section 1 don't correspond to a typical A number. 11 Q. And -- 12 A. But, I mean, again, I don't -- 13 Q. And so even any employer could say, hey, 14 look, man, I don't even know how many digits an 15 A number has, but I can tell you those two are 16 different numbers; right? Is that fair? 17 A. Right. 18 Q. And then to say, well, wait a minute, 19 I'm not an immigration lawyer, but I do know 20 that at some point INS stopped existing, right, 21 and because I -- 22 MR. BISS: Object to the form. 23 Q. You know, this employer is dealing with 24 multiple employees a year. Okay? Wouldn't it 25 be reasonable for them to then look at the</p>

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<p style="text-align: right;">Page 246</p> <p>1 "Resident Since" and wonder why the number 2 that's not correct on it is an INS number when 3 INS didn't exist in 2004? 4 MR. BISS: Object to the form. 5 A. And, again, I think at this point 6 you're asking me to speak would it be reasonable 7 for an employer. 8 I don't think with regard to the 9 permanent resident card, no, because I don't 10 think an employer would be required to say when 11 INS went out of -- that's not the typical level 12 of review that would be required. 13 Q. But you know, not an employer, but you 14 know that those cards are fake; right? 15 A. I would -- I mean, I would have a strong 16 suspicion they are. Even ICE doesn't flat out 17 come out and say that they know. ICE issues 18 what's called a Notice of Suspect doc letter, 19 so -- and that's even running them against their 20 own databases, so -- 21 Q. And so -- 22 A. Yeah, I mean, I would say very likely. 23 Q. And then you know he was one of the 24 people we deposed and asserted his Fifth 25 Amendment privilege when I asked him whether he</p>	<p style="text-align: right;">Page 248</p> <p>1 don't know any of the background as to why a 2 List B document wasn't provided; but, you know, 3 if you -- if you don't -- if you don't get a 4 List B and a List C, then you'd be required to 5 ask the employee to present that. 6 Q. And -- 7 A. Because this -- this -- this would be a 8 substantive violation for failure to provide a 9 List B document. 10 Q. And, again, we see a Social Security 11 number here beginning in a 9; right? 12 A. Yeah. The Social Security card looks 13 suspect to me based on the fonts. 14 Q. And that's what I was noticing. I was 15 just looking -- Just the three we've been looking 16 at here, the last three, the Social Security 17 cards all have different fonts and different 18 logos in the center. 19 MR. BISS: Object to the form. 20 Q. Is that fair to say? When you look at 21 all these three, I mean -- 22 A. One I can't -- It's the copy. You 23 can't see the logo. One the logo is kind of 24 off-centered. This, the logo looks fairly 25 accurate to what a regular Social Security</p>
<p style="text-align: right;">Page 247</p> <p>1 was authorized to work in the United States; 2 right? 3 A. Yes, I saw he was in that list. 4 Q. Let's quickly go through the next three 5 who are still there. 6 The next one was [REDACTED], 7 which is Exhibit 17 and 18. Here is 17, and here 8 is 18. Review it when you have a chance. Let me 9 know what strikes you as being problematic with 10 this one. 11 A. I see a -- I see a -- This would be a 12 missing List B document, which would be a 13 substantive violation. 14 Q. And so Mr. -- [REDACTED] didn't even 15 bother submitting two fake cards. He just 16 submitted one card. Right? 17 MR. BISS: Object to the form. 18 A. Yeah, based on this I-9 record, there's 19 no List B document attached. 20 Q. And so what would a reasonable employer 21 do there? 22 A. So -- 23 MR. BISS: Object to the form. 24 A. -- a missing List B or a List C 25 document would be a substantive violation. I</p>	<p style="text-align: right;">Page 249</p> <p>1 card's logo would be, but I think the font is -- 2 Q. And the font is different on all of 3 them; right? 4 A. Correct. 5 MR. BISS: Object to the form. 6 Q. Wouldn't that be kind of a clue to an 7 employer that maybe somebody is submitting false 8 Social Security cards to me? 9 MR. BISS: Object to the form. 10 A. Do I think an employer would be able to 11 look at that document and know with certainty 12 that it should be rejected because it's not -- 13 Q. That's not my question at all, no. 14 A. What's your question? 15 Q. My question is, don't you think a 16 reasonable employer would be able to look at 17 these Social Security cards and understand that 18 somebody could be presenting him with fake Social 19 Security cards? 20 A. I think if you -- 21 MR. BISS: Object to the form. 22 A. If you did a comparison, you would 23 think that somebody could be presenting fake 24 Social Security cards. 25 Q. And, in fact, that would, under the</p>

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<p style="text-align: right;">Page 250</p> <p>1 standard, create a duty to investigate a little 2 bit further? 3 MR. BISS: Object to the form. 4 A. Perhaps if not viewed in isolation, but 5 if you're -- if you're viewing what the standard 6 is at the time of hire, when they're looking at 7 one presentation of documents from one employee, 8 it's a different -- again, an employer is not 9 required to go pull out its other I-9s and do a 10 side-by-side comparison. Employers aren't 11 required to do that. 12 Q. But employers can consider and, in 13 fact, should consider other factors that they're 14 aware of besides just the documents that have 15 been put in front of them; isn't that true? 16 A. Outside of the documents in front of 17 them? 18 Q. Correct. 19 A. Only if there's a -- the totality of 20 circumstances would require that level of 21 diligence. 22 Q. And so if, for example, you hired 20 23 people in a year and the first 19 all had a 24 Social Security card that looked exactly the 25 same and the twentieth person comes in and you</p>	<p style="text-align: right;">Page 252</p> <p>1 employer, think that it crosses the threshold, 2 you would be required to -- you know, crosses 3 the threshold of not being genuine. Okay? 4 Q. And so NuStar was not supposed to -- 5 based on the information it was presented from 6 [REDACTED] they were not supposed to hire him; 7 is that correct? 8 A. They -- 9 MR. BISS: Object to the form. 10 A. They have a paperwork error here. They 11 have a missing document. I don't know -- So, 12 yeah, I mean, you're correct that without a 13 List B and a List C, that person should not have 14 been hired. Okay? That's -- That's an accurate 15 statement. Without a List B and a List C, that 16 person should not have been allowed to begin in 17 their employ. 18 Q. And you're aware that I depose [REDACTED] 19 and he asserted his Fifth Amendment privilege 20 with respect to the question whether he was 21 authorized to work in the United States; right? 22 A. I saw that he was one of the deposition 23 transcripts, yeah. 24 The -- Now, just to give some 25 context on missing documents, in every audit I've</p>
<p style="text-align: right;">Page 251</p> <p>1 look at it and say, boy, that's different than 2 the other 19? 3 A. I think in that hypothetical, if you 4 had a consistent -- and you had the same person 5 reviewing the documents and you -- and you had 6 19 that looked identical and one that looked 7 completely different, then I think that you 8 could do a follow-up inquiry with that employee 9 and say this seems suspect to me, can you, 10 you know, provide other indicia of your work 11 authorization. 12 Now, you'll recall that at the 13 top of the I-9 and the regs say that an employer 14 cannot specify which documents an employee must 15 present. 16 Q. Right, but -- 17 A. So the employee gets to choose which 18 documents they present. If one is -- on its 19 face does not appear genuine, then, yeah, you 20 can go back to the employee and say we either 21 need another document or we're not going to be 22 able to employ you. 23 Q. Not only can you, but you're legally 24 required to; isn't that true? 25 A. If you think -- If you, as a reasonable</p>	<p style="text-align: right;">Page 253</p> <p>1 ever done for every company, there's missing 2 documents like this, so this wouldn't be -- this 3 is not evidence of a knowing violation. This is 4 just evidence of a missing List B document. 5 Q. Let me ask you about that. 6 A. Okay. 7 Q. Are you aware that [REDACTED] still 8 works there? 9 A. I'm not. 10 Q. Are you aware that all these people 11 I've been asking you about still work there? 12 A. I believe you said that earlier today, 13 yeah. 14 Q. If NuStar was your client, what would 15 you tell them to do with respect to these 16 employees? 17 MR. BISS: Object to the form. 18 A. I would likely instruct them to meet with 19 the employees to inquire about their status based 20 on the totality of the information that has been 21 presented to me as the employer. 22 You don't jump and just automatically 23 terminate. You would give the employee a reasonable 24 opportunity to either explain the situation or 25 establish their work authorization. CSI allows</p>

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<p style="text-align: right;">Page 254</p> <p>1 an employee to present new documentation to 2 establish work authorization. 3 So that's -- that's what I would 4 advise, is that they have a sit-down with the 5 employees and that they say, you know, we have 6 reason to believe, based on the totality of 7 everything we've learned during the course of 8 this litigation, that you're -- you may not be 9 authorized for employment, we're going to give 10 you a reasonable period of time to present those 11 documents, you know, and that's -- that's what I 12 would advise. I mean, I -- 13 Q. And what if the employer didn't provide 14 them? I'm sorry, what if the employee didn't 15 provide them? 16 A. Within a reasonable period of time, then, 17 you know, my advice would likely be to terminate 18 the employee at that point, after you've provided 19 a reasonable period of time. 20 Q. And what would you say if we subpoenaed 21 all six of these individuals to present current 22 work authorization documents and none of them 23 did? 24 MR. BISS: Object to the form. 25 A. I would probably say I don't think that --</p>	<p style="text-align: right;">Page 256</p> <p>1 likely advise the same thing I said earlier, 2 have the inquiry, give a reasonable period of 3 time, and advise to terminate if they do not 4 meet the requirement at that point. Because I 5 think at that point you've crossed the -- you've 6 likely crossed the threshold to where you can 7 have that inquiry with the employee. 8 Q. Let me show you what's been marked as 9 Defendants' Exhibit 6, which is the I-9 for 10 [REDACTED]. 11 A. Okay. 12 Q. What strikes you as being off about 13 this one? 14 A. With regard to the cards? Is that what 15 you would like me to look at? 16 Q. The I-9. 17 A. I believe this is a -- not the correct 18 version of the I-9 for '07. Maybe it is, though. 19 You can't see the version. The -- Beyond that, 20 the I-9 on its face is missing the description 21 of the documents. The documents themselves is a 22 resident alien card, an older one. 23 Q. Could it have been -- have a valid 24 expiration date of '09? 25 A. The expiration date itself, yeah, I</p>
<p style="text-align: right;">Page 255</p> <p>1 I don't know if you want me to go into this, but 2 the -- I don't know that the subpoena would be 3 valid in the sense I don't know that you would 4 have a right to compel production of an identity 5 and an authorization document. Perhaps you would 6 be, but I think there would be questions about 7 the enforceability of such a subpoena. I'm not -- 8 I'm not entirely -- 9 Q. Let me stop you there. 10 A. Yeah. Sure. 11 Q. So I'll give you more information. 12 A. Sure. 13 Q. So we did go to the court, and the 14 judge did enforce that subpoena with respect to 15 all six, and they were subpoenaed to not only be 16 deposed to present -- but to present current work 17 authorization documents as well as any current 18 IDs they have, and none of them did, and so -- 19 MR. BISS: Object to the form. 20 Q. -- with that information, I'm asking 21 you, what's the -- what should NuStar do with 22 respect to those employees? 23 A. If -- If it was -- 24 MR. BISS: Object to the form. 25 A. If I was -- If I was advising, I would</p>	<p style="text-align: right;">Page 257</p> <p>1 mean, that's suspect. The -- 2 Q. Because that can't be right; right? It 3 would have to expire by '07? 4 A. Yeah, perhaps. And I think, I mean, 5 there's another issue with the class of admission, 6 I think; but, again, these -- with the class of 7 admission. Again, these are issues that I'm 8 aware of, of when these resident alien cards 9 were issued for this class. 10 The Social Security card font I 11 think looks different. The number is higher 12 than it normally is on the logo. So, yeah, I 13 mean, there's -- there's indicia of a fake card, 14 fake cards here. 15 Q. And so [REDACTED] is somebody 16 who is still employed, and I deposed him last 17 month with the other individuals, and he asserted 18 his Fifth Amendment privilege with respect to any 19 questions about documents or work status. 20 Are you aware of that? 21 A. Yes, I saw those transcripts. 22 Q. Let me show you one last one, and we'll 23 take a break here. It's [REDACTED] 24 [REDACTED] which is Exhibit 109. 25 A. Okay. I've reviewed it.</p>

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<p style="text-align: right;">Page 258</p> <p>1 Q. In the first page we got another 2 noncitizen national of the United States; is 3 that right? 4 MR. BISS: Object to the form. 5 A. Yeah. I don't know that that's relevant, 6 though, that they -- that he checked -- he checked 7 that box. I mean, it's relevant because it's 8 likely incorrect, but it's not relevant as to the 9 employer's compliance. 10 Q. And then the employer filled out the 11 certification, it looks like, two years after 12 the employee's first day of employment; is that 13 right? 14 A. Yeah, it looks -- it looks to be about 15 two years untimely, which would be a substantive 16 violation. 17 Q. And then didn't fill out the ID 18 information; is that right? 19 A. Correct. 20 Q. And you're going to love this one, 21 being a Cornhusker fan. Take a look at that 22 Nebraska ID. 23 Do you notice anything about that 24 address? 25 A. I reviewed it.</p>	<p style="text-align: right;">Page 260</p> <p>1 A. Right. Within the DMV system, I would 2 assume that it would be abbreviated Ave.; but, 3 again, these are not inquiries that an employer 4 would need to make. 5 Q. And have you ever -- have you ever seen 6 an ID that abbreviated avenue as AV? 7 A. I don't know that I have. 8 Q. Are you familiar with a Vine AV in 9 Lincoln, Nebraska? 10 A. No, I am not. 11 Q. What about the Social Security card? 12 A. I spoke to that already. I said I 13 think that the number is -- is too high there. 14 I think the number and the name are reversed. 15 Maybe not, though. It's -- 16 Q. It doesn't look right, does it? 17 A. There's an issue with the font, I 18 think, you know, just based on seeing a lot of 19 Social Security cards. 20 Q. And, again, these, like the other five, 21 [REDACTED] is still an employee there. Are 22 you aware of that? 23 A. I was not until today, but the -- you 24 did, I think -- was he one that was deposed? 25 Q. And he was the sixth one that was --</p>
<p style="text-align: right;">Page 259</p> <p>1 Well, I mean, I know that in 2 Lincoln it's Vine -- it's Vine Street that I'm 3 aware of, but is that what you're referencing? 4 Q. Yeah. 5 A. Yeah. I mean, I don't -- Again, I 6 don't know that an employer is supposed to know 7 the difference between avenues and streets. In 8 fact, I know they're not. 9 If there's anything questionable 10 about the documents here, it's likely the Social 11 Security card, based on the placement of the 12 number. 13 Q. That's right by the Cornhusker football 14 stadium; right? 15 A. Vine Street? 16 Q. Yeah. 17 A. It is very near there, yep. 18 Q. And it looks like they're trying to say 19 on this ID that it's avenue instead of street; 20 right? 21 MR. BISS: Object to the form. 22 A. Yes, it appears that way. 23 Q. And that's clearly a typo, right, because 24 avenue is not abbreviated AV; right? 25 MR. BISS: Object to the form.</p>	<p style="text-align: right;">Page 261</p> <p>1 A. I thought so, yeah. 2 Q. -- deposed and asserted his Fifth 3 Amendment privilege, like the others did, to all 4 questions relating to work authorization or 5 documents. 6 MR. KLINEFELDT: And so why don't 7 we take a break right there and then do our best 8 to finish up. Is that okay? 9 THE WITNESS: Sure. 10 THE VIDEOGRAPHER: We are going 11 off the record. This is the end of Media Unit 12 Number 4. The time is 3:22. 13 (A recess was taken.) 14 THE VIDEOGRAPHER: We are back on 15 the record. This is the beginning of Media Unit 16 Number 5. The time is 3:36. 17 Q. Okay. Mr. Samson, when we left off, we 18 had just reviewed the I-9s of six employees who 19 were employed at the time the article in question 20 was published, and they're still employed at 21 NuStar. 22 Now I'm going to ask you just about 23 a few examples of employees who worked there prior 24 to the article but no longer work there. Okay? 25 A. Okay.</p>

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<p style="text-align: right;">Page 262</p> <p>1 Q. And the first one I'm going to show you 2 is a gentleman by the name of [REDACTED] 3 [REDACTED] which is Defense Exhibit 31. 4 When you get an opportunity, take 5 a look at that and tell me if you notice anything 6 wrong about that document. 7 A. Okay. I've looked at it. 8 Q. Do you notice any -- any errors or causes 9 for concern with this one? 10 A. Well, Section 2 on the I-9 is not 11 completed or signed, so that would be a substantive 12 violation. 13 Q. And so there's no certification that the 14 employer reviewed the documents at all; is that 15 correct? 16 A. That's correct. So a failure to -- to 17 sign and date and complete that would be a 18 substantive violation. 19 Q. And then he marks down a noncitizen 20 national; right? 21 A. I see that, yes. 22 Q. And probably not correct. Fair to say? 23 A. Probably an incorrect attestation. Well, 24 very likely an incorrect attestation by the 25 employee, given -- given the Guatemalan consular</p>	<p style="text-align: right;">Page 264</p> <p>1 documents, and it appears to me that an ID card 2 from a foreign country like the one that was 3 presented is not an acceptable ID. 4 A. That's accurate. So that's an -- that's 5 a violation that's called an improper List B 6 document. I agree that the consular ID would not 7 be an acceptable List B document. So that I-9 8 would -- In the event of an ICE audit, that I-9 9 would have subjected the employer to a potential 10 fine. 11 Q. Let me show you a second one real quick. 12 It is Defense Exhibit 37, which is [REDACTED] 13 [REDACTED] 14 So there's no employer review and 15 verification section filled out at all; correct? 16 A. That's correct. So you're missing 17 a Section 2 certification on this, which 18 we've discussed earlier that that would be a 19 substantive violation. 20 Q. And then what do you make of the fact 21 that his name is [REDACTED], first name, spelled 22 [REDACTED] and we know that because he filled 23 out Section 1, presumably, and then on his 24 resident alien card he puts forth, that's the 25 way he signs it, but the resident alien card has</p>
<p style="text-align: right;">Page 263</p> <p>1 ID seems to establish he's from Guatemala, so 2 Guatemalans are not -- would not be considered 3 noncitizen nationals. So, yeah, I would agree 4 that that's likely an incorrect attestation by 5 the employee. 6 Q. What about the Social Security card? 7 A. Yeah, I would -- I mean, based on my 8 experience in reviewing, you know, valid Social 9 Security cards, that -- the font appears different 10 from the typical Social Security card. The number 11 you can't see based on the logo, things of that 12 nature. 13 I'm not sure a consular ID is a 14 valid List B document. I'd actually have to 15 check the list for that, but the -- so, yeah, 16 there's -- there's paperwork violations and, you 17 know, potentially a fake -- you know, a fake 18 Social Security card or a manipulated Social 19 Security card that would get flagged in the 20 event of an ICE audit. 21 Q. And I'll refer you to the instructions 22 for Form I-9. 23 Does that list out what is a 24 valid -- and then also on the blank I-9 form I 25 handed you, it lists out acceptable List B</p>	<p style="text-align: right;">Page 265</p> <p>1 the government misspelling his first name. 2 What do you make of that? 3 A. Yeah. I mean, it -- 4 MR. BISS: Object to the form. 5 A. This -- This is a -- This is an -- This 6 is an example of where, you know, further -- 7 further diligence may have been required of the 8 employer in light of the misspelling on the name 9 by the employee in Section 1 and then the name 10 as it appears on the -- on the cards. 11 You know, as the -- the leading -- 12 the leading case on point is the Aramark. I 13 believe there was a similar situation in that 14 case; and the court analyzed whether, you know, 15 misspellings in names or missing -- missing 16 consonants in names and things or inconsistencies, 17 whether an employer is required to -- to catch 18 that. 19 And there's actually case law on 20 both sides of that issue that I'm aware of, so 21 it's indicia. It's indicia, and had they caught 22 it, it would have required them to do a follow-up 23 inquiry, I think, with the employee; but, you 24 know, clearly they didn't catch it. 25 You know, we don't know what</p>

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<p style="text-align: right;">Page 266</p> <p>1 happened because this -- these -- the important 2 thing to remember is these Form I-9s are created 3 at the time of hire, so it's like a snapshot at 4 the time of hire, and it's usually a one- to 5 two-minute situation where the employee presents 6 the documents, the form is completed. 7 And so courts that have analyzed 8 whether -- whether there's, you know, constructive 9 knowledge of unauthorized employment or of a -- 10 or of a nongenuine document have analyzed these 11 exact issues that we're going through. 12 Q. And he actually -- We have -- Well, he 13 marks down a citizen or national of the United 14 States. I thought for a second we had somebody 15 who didn't mark down a noncitizen national; but 16 it looks like this form, when you check the box, 17 it's either you're saying you're a citizen or 18 national -- 19 A. It used to be that -- 20 Q. -- of the U.S.; right? 21 A. -- on these older forms. On these 22 older forms, they used to put those together, 23 and then they separated it out on the newer 24 versions. 25 Q. Okay. Let me show you one last one here</p>	<p style="text-align: right;">Page 268</p> <p>1 hey, you know, maybe that resident alien card 2 doesn't look like what it's supposed to, on its 3 face do you see not only his first name is 4 misspelled but also it's expired. 5 MR. BISS: Object to the form. 6 Q. Right? 7 A. Right. I will -- you know, on that -- 8 on that point, I -- and maybe we're going to get 9 to this, and I think I pointed it out in my 10 report, but there was -- Mr. Arnold, in his 11 report, toward the end, focused a lot on LPR 12 cards that expired during -- during the time of 13 employment and claimed that those were violations 14 for failure to reverify. 15 And just to be clear, lawful 16 permanent resident cards are not required to be 17 reverified in Section 3, even if they expire 18 during the course of employment. 19 Now, this situation, in the 20 [REDACTED] I-9, the card was -- was 21 expired at the time of hire, so it should not 22 have been accepted, so it's an improper List A 23 document. 24 Q. Right. Another person who shouldn't 25 have been hired, based on what you see?</p>
<p style="text-align: right;">Page 267</p> <p>1 real quick. Oh, I forgot about that. Let me go 2 back to that one. 3 So it looks like he starts in, 4 what, '06? He signs it in '06, right, the I-9? 5 A. I see that, yes. 6 Q. And it's first day of employment earlier, 7 so he's starting no later than '06, and the card 8 expires in '05. 9 A. Well, we can't -- we can't tell that. 10 Q. Why not? 11 A. I mean, the '05 is listed under alien 12 number. Oh, I see where you're -- I see what 13 you're saying. Okay. 14 Q. Yeah. Well, I mean, it's clearly a 15 fake. I mean, it's -- Do you think that's a 16 real card? 17 A. You're -- I mean, very, very -- 18 MR. BISS: Object to the form. 19 A. Very unlikely. 20 MR. BISS: Object to the form. 21 A. Very unlikely. The -- Correct. The 22 card appears expired on its face; and that's a 23 violation, to accept an expired card. That's a 24 substantive violation. 25 Q. Right. So even if you didn't catch,</p>	<p style="text-align: right;">Page 269</p> <p>1 MR. BISS: Object to the form. 2 A. It's a situation -- It's a compliance 3 error in the sense that it should not have been 4 accepted. The document should not have been 5 accepted. It's a compliance error. 6 Is this coming to me? 7 Q. This is Exhibit 29, which is [REDACTED] 8 [REDACTED] He may be related to the other individual 9 I showed you, I don't know, but they have -- 10 MR. BISS: Object to the form. 11 Q. -- a similar last name. 12 And so what I wanted to ask you 13 about on this one is, it appears that [REDACTED] 14 fills out both Section 1 and 2 and certifies it. 15 Is that the way you read it? 16 A. Yeah, that appears right. I think this 17 is a situation where the employer failed to ensure 18 the employee properly completed Section 1 and 19 Section 2. Section 2 does seem to contain the 20 same handwriting throughout the entire document, 21 so I think that's clearly an error. 22 Q. And so he dates it 7-20-07, both Section 1 23 and 2; correct? As it appears when he fills out 24 the form is 7-20-07? 25 A. Correct. I see that, yep.</p>

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<p style="text-align: right;">Page 270</p> <p>1 Q. And then his resident alien card would 2 have already been expired; right? 3 A. Right. This is another example of a 4 violation for an improper List A document. 5 Q. Does that resident alien card appear to 6 be genuine to you? 7 MR. BISS: Object to the form. 8 A. Based on my experience, you know, and 9 not a reasonable employer's perspective, but 10 based on my experience, I would -- you know, I 11 would suspect that this is a fake document, 12 although it is very -- it very much looks like 13 the resident alien cards that existed at that -- 14 during that time frame. 15 But, you know, there's -- there's 16 some indicia that, with regard to fonts and 17 things and placement of the picture, that would 18 put somebody with my background and knowledge or 19 would cause somebody with my background and 20 knowledge and Mr. Arnold's background to suspect 21 that's not likely a valid card, same with the 22 Social Security card on that one; but, again, 23 you know -- 24 Q. What about -- 25 A. -- different standard for employers.</p>	<p style="text-align: right;">Page 272</p> <p>1 saying you don't think a jury would say that 2 this employer knew that they were hiring an 3 undocumented worker? 4 A. If the jury -- 5 MR. BISS: Object to the form. 6 A. If the jury is properly instructed on 7 antidiscrimination statutes, on the case law 8 that exists with regard to what an employer is 9 required to do as far as diligence is concerned, 10 you know, I think they would have a difficult 11 time finding that a reasonable employer in the -- 12 in the ag industry has knowledge that these are, 13 indeed, unauthorized. 14 I would also argue that there's 15 zero evidence that they are. Indeed -- Well, I 16 shouldn't say zero evidence. There's zero 17 conclusive evidence that they're unauthorized in 18 the sense we don't have I-213s, we don't have 19 any document from the federal government that 20 establishes that they're unauthorized. 21 I understand there's -- there's 22 significant indicia of it that you've raised; 23 but, you know, I can't -- I can't say with 24 certainty that a reasonable employer would have 25 rejected these documents, especially in my</p>
<p style="text-align: right;">Page 271</p> <p>1 Q. Section 2, which he completes himself, 2 he lists the document title as Mexico, the 3 issuing authority as Omaha, and has a document 4 number there that, as near as I can tell, doesn't 5 relate to anything. 6 A. I mean, I think this is an example of 7 an employee that was asked to fill out a form 8 and given no instruction whatsoever as to how to 9 do it. And what you've seen here is, you know, 10 just a noncompliant Form I-9, which in the event 11 of an audit would have been flagged for these 12 substantive violations. 13 I don't believe that, based on 14 the review of the documents, that, you know, a 15 reasonable employer -- that constructive 16 knowledge of unauthorized status would be imputed 17 to a reasonable employer with regard to these, 18 but clearly the List A document was -- should not 19 have been accepted at the time of hire because it 20 was expired, so that would be -- that would be a 21 substantive violation. 22 Q. And that's what I wanted to ask you. 23 With respect to -- I've shown you nine of these. 24 Are you -- Are you really telling me that if I 25 was in front of a jury with these and -- you're</p>	<p style="text-align: right;">Page 273</p> <p>1 background of doing audits and seeing -- and 2 seeing what employers do all throughout the 3 country. 4 These are very typical issues. 5 These are very typical I-9 compliance issues 6 that employers deal with throughout the country. 7 It's very difficult to equate compliance issues 8 with knowledge of unauthorized status. 9 Q. Isn't that the purpose of the I-9 form, 10 is to make sure -- 11 MR. BISS: Objection. 12 MR. KLINEFELDT: Hold on, Steve. 13 Q. -- is to make sure that you are not 14 hiring unauthorized workers? 15 A. That's -- That was the intended purpose 16 at the beginning, back -- 17 Q. That's not the purpose now? 18 A. That's the intended purpose. That's 19 not the -- the reality of where the -- how the 20 law has evolved in this area is that the use of 21 fraudulent documents and things of that nature 22 have got to the point where -- where they're 23 better, they're -- they're more prevalent. 24 And so as a result, you've got 25 the law has evolved to where -- and especially</p>

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<p style="text-align: right;">Page 274</p> <p>1 on the antidiscrimination side, that you now have 2 a body of law that says exactly what a -- what 3 an employer should do at the time. 4 So the I-9 itself is still our 5 best shield for confirming authorization of 6 employment, but it's -- and its purpose was to 7 do that, but it does not mean that an employer 8 is required to be a document expert. Right? 9 They're not required to spot fake or fraudulent 10 documents. They're just -- That's not what 11 they're required. They can't bury their head in 12 the sand, obviously. 13 Q. Right. 14 A. But they can -- they definitely are not 15 required to be document forensic experts, so to 16 speak. 17 Q. Let me ask you this way: Do you think 18 any of the nine people that I've showed you 19 here today are authorized to work in the United 20 States? 21 MR. BISS: Object to the form. 22 A. The ones that we just went through? I 23 mean, again, if I was looking at it in a -- in 24 a time warp, you know, I would say no, but I -- 25 I can't speculate as to whether statuses have</p>	<p style="text-align: right;">Page 276</p> <p>1 unauthorized; but without that enforcement action, 2 we don't know that. 3 So I'm answering your question, 4 but I'm being careful in the speculation aspect 5 of it because I really think it's important that 6 setting aside the knowledge component and knowing 7 what we know about -- about the ag industry 8 and things of that nature, yes, I think it's -- 9 I think it's likely that a portion of their 10 workforce presented fraudulent documents to 11 establish work authorization. 12 Q. Do you think NuStar should have known 13 with respect to at least some of these individuals 14 that it was likely they were hiring an 15 unauthorized worker? 16 A. I would -- 17 MR. BISS: Object to the form, 18 asked and answered. 19 A. I would say that applying the standards 20 that have been established, there are certain 21 examples where there was -- there was indicia 22 that perhaps would have required the employer to 23 inquire further. 24 But, in general, I don't think 25 that, as you look at these I-9s in isolation,</p>
<p style="text-align: right;">Page 275</p> <p>1 changed or whether they're authorized for 2 employment now. That happens quite often. But, 3 yeah, I mean, they're high -- the documents are 4 highly suspect. So is their authorization 5 status. 6 Q. And so do you think -- is it fair to say, 7 then, that NuStar hired undocumented workers? 8 MR. BISS: Object to the form. 9 A. No. And that's in my report. They're 10 documented. They're documented, and that's -- 11 Q. Here's what I mean. Is -- Is -- I mean 12 unauthorized to work in the United States. And 13 so what I'm asking you is, before we talk about 14 knowledge or whether they knew they did or not, 15 as you sit here today, do you think NuStar hired 16 individuals who are not authorized to work in the 17 United States? 18 A. Setting aside the knowledge, setting 19 aside the knowledge component, I think it's very 20 highly likely that a portion of their workforce, 21 based on what I've reviewed, presented 22 fraudulent documents in order to establish work 23 authorization, which in the event of an ICE 24 audit or in the event of some other enforcement 25 action would have revealed that they were</p>	<p style="text-align: right;">Page 277</p> <p>1 that there's anything that establishes knowledge 2 or a should have knowledge on the part of the 3 employer. 4 Q. And so you don't think, for example, 5 with respect to [REDACTED], who submitted 6 only a Social Security card that doesn't even 7 look right, you don't think that they should 8 have known that he was likely unauthorized to 9 work in the United States? 10 A. I think -- 11 MR. BISS: Object to -- Object to 12 the form, mischaracterizes the evidence. 13 A. I think that, to answer that question, 14 the missing List B document is a compliance error. 15 It's not a -- It doesn't establish a knowledge 16 component without -- 17 Q. Well, the paperwork here -- 18 A. Without -- 19 Q. Because we're just talking about paperwork; 20 right? 21 A. Without further -- without further 22 indicia, right, that would -- that would -- that 23 would connect -- for example, if you had -- if 24 you had a sworn statement where the employee said, 25 yeah, I said I didn't have a List B document, and</p>

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<p style="text-align: right;">Page 278</p> <p>1 the employer said, that's okay, we'll just take 2 your List C, if you had a sworn statement or 3 something to that sort, then now you've got a 4 knowing hire. Okay? Without those -- Without 5 that level of evidence, you just have a paperwork 6 violation. 7 Q. What about if they're advised by their 8 attorney to assert the Fifth Amendment privilege 9 and they do so? 10 A. We've -- We've talked about that. I 11 don't know -- 12 MR. BISS: Object to the form. 13 A. I don't -- And now what you're asking -- 14 Well, let me -- Why don't you finish your question 15 in that regard. 16 Q. Yeah. So my question is, are you telling 17 me that you'd be willing to say that you don't 18 believe NuStar knowingly hired even a single 19 unauthorized worker? 20 A. Knowingly hired. I have not reviewed 21 evidence that they knowingly hired an unauthorized 22 worker. I have not seen evidence that would say 23 they knowingly hired. 24 With regard to -- With regard to 25 the individuals that, you know, you produced the</p>	<p style="text-align: right;">Page 280</p> <p>1 likely reject it and advise to only -- to only -- 2 in the event of like an audit or something, I 3 would likely advise, you know, we should only 4 bring substantive violations or finable 5 violations for the paperwork errors because I 6 just don't think here that there's enough 7 evidence to cross into the knowing territory. 8 Q. Have you ever seen I-9s more ridiculous 9 than the nine I showed you here? 10 A. Oh, absolutely. 11 MR. BISS: Object to the form. 12 Q. And so do you think that this is filling 13 out the I-9 in good faith? 14 A. I think that it is compliant with the 15 regulations in the sense they're accepting the 16 right documents for the most part, with a few 17 limited examples. 18 I think that there is compliance 19 issues with this employer in the sense that they 20 should be, you know, completing the I-9s; but as 21 far as the presentation of documents and things, 22 I think you would be surprised at how regular 23 that this -- these type of documents are being 24 produced to employers throughout the entire 25 United States.</p>
<p style="text-align: right;">Page 279</p> <p>1 deposition transcript and there was other indicia, 2 now what you're wading into is knowing continued 3 employment, and I believe I answered that and said 4 in those circumstances I would advise the employer 5 to give the employee a reasonable period of time 6 to produce documentation; and if they don't, 7 then I would advise termination on the basis that 8 you've likely crossed that threshold. That's in 9 the knowing continued employment arena. Okay? 10 Q. And so -- 11 A. The knowing hire, I have -- I -- I can 12 affirmatively answer I do not think that there's 13 evidence of a knowing hire here. 14 Q. And that's because you don't think that 15 there is enough in any of these situations or 16 even reviewed all together that would cause an 17 employer to believe that the applicant was 18 unauthorized to work in the United States? 19 A. Correct. I think that a reasonable 20 employer may have missed a lot of the indicia 21 that we've went through and that Mr. Arnold 22 pointed out and that -- and so if you're talking 23 about knowing hires, I would not -- if I was 24 reviewing a sufficiency on whether to bring an 25 allegation or a violation for knowing hire, I'd</p>	<p style="text-align: right;">Page 281</p> <p>1 Q. And there's a lot of employers who -- 2 who hire undocumented or unauthorized workers. 3 Is that fair to say? 4 A. Right, but what we're -- 5 MR. BISS: Object to the form. 6 A. What we're talking about is that 7 knowledge component. Okay? 8 Q. And that would be for a jury, right, 9 is -- 10 A. It's a fact -- Exactly. It's a fact 11 inquiry. 12 Q. It's a fact question whether there's 13 enough for constructive knowledge; right? 14 A. I -- I completely believe that. 15 Q. And -- 16 A. And I've said that throughout today's 17 deposition. 18 Q. You had stated on page 16 of your report, 19 second -- or first full paragraph, middle of that 20 paragraph, quote, "With some limited exception, 21 the documents that were presented by NuStar 22 employees reasonably appeared on their face to 23 be genuine." 24 A. What page? I'm sorry. 25 Q. It's page 16 of your report, first full</p>

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<p style="text-align: right;">Page 282</p> <p>1 paragraph, middle of the paragraph. 2 A. And are you asking me a question about 3 that statement? 4 Q. Yeah. I just wanted to draw your 5 attention to it and ask you if you still believe 6 that's correct. 7 A. Where are we at? I'm sorry. Can you 8 point me to it? 9 Q. It's page 16, middle of the first 10 paragraph. 11 A. The first full paragraph? 12 Q. Yeah. 13 A. Yeah. And what I'm -- I'm comfortable 14 with that statement in the sense that what 15 I'm saying there or I'm -- that's as from the 16 perspective of a reasonable employer. 17 I think the limited exception, 18 when I reference the limited exception, I'm 19 referencing the I-9s that we just went through. 20 I think that there is some indicia 21 that those were not genuine cards that could have 22 been caught by the employer at the time of hire; 23 but, in general, having looked through, you know, 24 some of the other I-9s and things, it's very -- 25 it's very difficult to say that an employer should</p>	<p style="text-align: right;">Page 284</p> <p>1 reasonably genuine documents, which is completely 2 accurate, so -- 3 Q. Right, but with some limited exception, 4 the documents that were presented by NuStar 5 employees reasonably appeared on their face to 6 be genuine; right? 7 A. Yeah. And that introductory clause is 8 because there were a few examples, which I think 9 we went through, where I thought the employer 10 should have, you know, conducted at least a 11 follow-up inquiry with the employee or asked for 12 a different document or something like that in 13 the sense that, you know, that -- that's why I 14 included that introductory clause. 15 Q. What does the law say about an employer 16 who doesn't take action to follow up with 17 documents in that instance? 18 A. It's a reasonableness standard. It's -- 19 What we're talking about is whether a judge 20 or a jury would determine that the employer 21 has constructive knowledge and failed to act 22 reasonably. 23 So that's -- I mean, that's what 24 we're talking about. So for the most part, you 25 know, from what I saw, most employers in the</p>
<p style="text-align: right;">Page 283</p> <p>1 have determined those were fake documents. 2 Q. But -- 3 A. And fake is the opposite of genuine. 4 So that's what we're talking about, is what's an 5 employer required to determine. 6 Q. But you still stand by the statement 7 that there are some documents that were presented 8 by NuStar employees that were -- that did not 9 reasonably appear on their face to be genuine; 10 correct? 11 A. And I think we just went through those; 12 and, you know, I included that clause in -- that 13 opening clause in that sentence with relation 14 to some of these examples that we went through 15 where -- you know, for example, the misspelled 16 name and things of those -- that nature. 17 Those, as I said earlier, probably 18 should have required additional follow-up by 19 the employer, you know, but, again, it's a 20 reasonableness issue. So that's really not for 21 me to determine. That would be for a jury to 22 determine. 23 Q. Right, but you make a statement about 24 it here, right, and -- 25 A. I say NuStar was required to accept</p>	<p style="text-align: right;">Page 285</p> <p>1 United States would have accepted the documents, 2 and that -- and so that reasonable -- what a 3 reasonable employer would have done in those 4 circumstances is the standard. 5 Q. So let me ask you about a -- I'm going 6 to continue to ask you about your report, so if 7 you want to keep that out. 8 On page 14 of your report, you 9 state in the first full paragraph, second 10 sentence, "However, it is my opinion there is 11 nothing to suggest or establish that NuStar was 12 on constructive knowledge that any of its 13 employees were unauthorized for employment." 14 Do you still believe that? 15 A. I do, as that term "constructive 16 knowledge" has evolved under the law. And if 17 you read the follow-up sentence to that, I say 18 this is particularly true given the fact that 19 ICE would bear the burden to establish both 20 constructive knowledge and that the employees 21 were indeed unauthorized, so -- and then I say, 22 put differently, you do not even get to the -- 23 to the knowledge component if there is not 24 some -- first some official confirmation of the 25 worker's alienage and manner of entry.</p>

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<p style="text-align: right;">Page 286</p> <p>1 So if somebody is going to say 2 the employer was on constructive knowledge, 3 okay, and if ICE was -- if ICE decided they were 4 going to bring a charge for knowing continued 5 employment, they would have to first establish 6 the unauthorized status of the individual. They 7 would also then have to establish the constructive 8 knowledge component. 9 It's a difficult burden, it 10 really is, which is why you don't see a lot of 11 these cases. 12 Q. But juries deal with knowledge 13 requirements all the time, right, criminal 14 cases, civil cases? They have to distinguish 15 between knowledge, constructive knowledge, 16 actual knowledge all the time; right? 17 A. Agree. I agree with that. 18 Q. What I want to ask you about there is, 19 let's talk about the establishing actual alienage, 20 and if we can put that aside for a second. In 21 other words, if I were to ask you to assume that, 22 you know, somehow we knew definitively the nine 23 people we were -- we talked about this afternoon 24 were, in fact, not authorized, right, if they 25 were here and they said, Mr. Samson, I'm telling</p>	<p style="text-align: right;">Page 288</p> <p>1 And here's an example. Because here's what's 2 missing, all right, because I think this would 3 be helpful. Here's what's missing. In a lot of 4 constructive knowledge cases, there is some 5 confirmation from the government that the 6 individuals are not authorized for work. 7 So your typical scenario is this: 8 ICE does an audit. ICE sends you a Notice of 9 Suspect doc letter. An employer gets that 10 letter from ICE and does nothing in response, 11 continues to employ. 12 That's your typical, you know, 13 slam-dunk constructive knowledge. You got -- 14 You had confirmation from the government, and 15 you did nothing in response, from the -- from 16 the -- from ICE or INS. That's what the case 17 law says. So that's a slam-dunk constructive 18 knowledge case. 19 This is speculative. You know, 20 it's -- but there's significant indicia, 21 especially with the nine that we went through. 22 I agree with that. It's a closer call. It's 23 definitely a closer call. 24 Q. And so your opinion is not that there's 25 no evidence that would go towards constructive</p>
<p style="text-align: right;">Page 287</p> <p>1 you I'm not authorized to work here, okay, would 2 that change your opinion at all about the statement 3 you made in this paragraph? 4 MR. BISS: Object to the form. 5 A. And then -- then what we're left with -- 6 if you take that element out, what we're left with 7 is was there indicia, was there enough indicia of 8 evidence to cross the threshold where you've got -- 9 where you have constructive knowledge, and that's 10 the -- that's the fact-based inquiry. 11 So based on the law that I'm 12 aware of and what I've reviewed, although, you 13 know, to -- to, you know, lawyers and other 14 people that look at this in a vacuum and they're 15 looking at these nine I-9s as examples in a 16 vacuum, you may think this is so obvious these 17 are fake cards, you're not looking at it from 18 the context of a reasonable employer that's 19 reviewing these documents against the backdrop of 20 making sure they're not committing discriminatory 21 hiring practices, making sure that they're treating 22 employees consistently. 23 And I'm not talking specific to 24 NuStar. That's just the standard that's been 25 laid out. Aramark talks about it in great detail.</p>	<p style="text-align: right;">Page 289</p> <p>1 knowledge. It's just that it doesn't meet the 2 burden of establishing constructive knowledge? 3 A. In my opinion, yes, that's accurate. 4 Q. And so, but there are ways to meet the 5 constructive knowledge element without getting 6 notice from the government, aren't there? In 7 other words, the law is not that the only way an 8 employer can be held liable under the constructive 9 knowledge standard is to first get confirmation 10 from the government that its employees are 11 unauthorized; right? 12 A. I agree with that, that there is -- there 13 is some law out there that -- where there's enough 14 blatant evidence that you can get there without 15 some sort of official confirmation. There is 16 some support for that in different circuits and 17 things. 18 It's tough. It's very -- It's a 19 very high threshold. That's why I said it's a 20 slam dunk if you have nonaction in response to 21 an ICE letter or an INS letter. That's what -- 22 the cases support that; but when you start talking 23 about this area, it gets really fact-intensive. 24 Q. What about situations like this, where 25 you have an employer who is committing substantive</p>

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<p style="text-align: right;">Page 290</p> <p>1 violations on their I-9s in almost all of them, 2 some of which ridiculously slow -- ridiculously 3 so in the sense that -- 4 MR. BISS: Object to the -- Object 5 to the form. 6 Q. -- you have an employee filling out 7 Section 2, or in a lot of cases just not filling 8 it out at all, combined with documents that 9 either are missing or appear on their face to be 10 not accurate or at least cause the need for 11 further follow-up, and then you know that they 12 are unauthorized because they assert their Fifth 13 Amendment in the deposition? You're telling me 14 these cases, you don't think meet the constructive 15 knowledge standard? 16 MR. BISS: Object to the form, 17 asked and answered. 18 A. With regard to the ones that have been 19 continued to employ, I think it's a very close 20 call. I mean, with regard to that specific 21 subset that you went through, it's close. It's 22 a -- It wouldn't be up to us to decide that, but 23 it's close. And if you're asking my opinion as 24 to whether it meets it, I mean, I'm looking at -- 25 Let me give you an example. Okay?</p>	<p style="text-align: right;">Page 292</p> <p>1 with I think what the case law calls the heart 2 of the I-9, Section 2, the noncompliance in 3 their specific cases, documents that appear to 4 be fake and then these guys asserting the Fifth 5 Amendment, couldn't a reasonable jury on a 6 preponderance of the evidence standard find that 7 NuStar had constructive knowledge that it was 8 hiring unauthorized workers? 9 MR. BISS: Object to the form, 10 asked and answered. 11 A. I mean, yes, I think -- I think a 12 reasonable jury could conclude that. It would 13 be -- It would be a close call; and it would, 14 you know, be up to the lawyers to make sure the 15 jurors are educated on the proper standards and 16 things; but, yeah, I mean, it's -- it's a fact 17 inquiry. 18 Q. In -- What about -- Well, we covered 19 that. I want to talk to you about good faith. 20 On page 14 of your exhibit -- of 21 your report, excuse me. 22 A. Page 14? 23 Q. Do I have that right? I believe -- 24 Where is that? There we go. I'm sorry, page 25 16.</p>
<p style="text-align: right;">Page 291</p> <p>1 There's a case called Associated 2 Painters. It's an OCAHO decision. ICE sends a 3 letter to the employer that lists these three 4 employees out and says that they're not -- 5 they're not authorized. There's a suspect 6 document. Employer terminates. Then employer 7 rehires them on the same documents a year later 8 or six months later. Okay? 9 The ALJ said that that was not -- 10 that they did not have constructive notice of 11 that -- of unauthorized employment by virtue of 12 the prior letter they got from ICE. 13 That's what I'm telling you. The 14 standard and the law has evolved that constructive 15 knowledge is so dangerous that it's essentially 16 being pushed out of the law. 17 It's so dangerous to say that 18 employer had constructive knowledge of something, 19 of unauthorized employment, that -- and there's 20 so much emphasis on avoiding discriminatory acts 21 that that part of the law is being squeezed out, 22 if that makes sense. 23 Q. But wouldn't it at least be fair to say 24 with respect to the six employees who were 25 deposited, based on NuStar's repeated noncompliance</p>	<p style="text-align: right;">Page 293</p> <p>1 Based on the fact that I think 2 we've all agreed that 289 of the 309 I-9s that 3 NuStar submitted have substantive violations, 4 some of which, as we've talked about now, and we 5 could probably talk about until midnight, you 6 know, had instances where the employer is not 7 filling out the attestation at all, we saw one 8 where the employee did it, and things of that 9 nature, do you think that NuStar complied with 10 the I-9 requirements in good faith? 11 A. So that -- that statement is -- I want 12 us -- I want to read you because when I put that 13 in my report, I did it -- I did it carefully in 14 the sense that I'm not talking about whether -- 15 I'm not saying that NuStar would be able to take 16 advantage of the affirmative defense of good 17 faith as that. 18 There's a whole separate idea of 19 good faith in this area. Okay? And there are -- 20 when ICE comes in and levies a fine, they have -- 21 they can enhance that fine based on a lack of 22 good faith. 23 There's a whole bunch of case 24 law, OCAHO decisions about what a lack of good 25 faith looks like, separate and apart from the</p>

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<p style="text-align: right;">Page 294</p> <p>1 affirmative against in 1324. Okay?</p> <p>2 When I say that they generally --</p> <p>3 when they -- when I say they complied in good</p> <p>4 faith with the requirements, they have real</p> <p>5 compliance issues. I say NuStar displayed an</p> <p>6 imperfect but regular and consistent attempt.</p> <p>7 At the end of the day NuStar has</p> <p>8 documents from the large majority of -- they</p> <p>9 have List B and List C documents from a large</p> <p>10 majority of their workforce. That cannot be</p> <p>11 refuted. I mean, they received documents, and</p> <p>12 that's the spirit of the I-9 requirement itself.</p> <p>13 Do they have a whole host of</p> <p>14 paperwork errors and compliance issues?</p> <p>15 Absolutely. But in good faith they did request</p> <p>16 documents and require documents from employees.</p> <p>17 In the cases where I've seen bad</p> <p>18 faith or culpable conduct found, that's where</p> <p>19 there's a complete disregard for the I-9</p> <p>20 requirement. There's missing documents. There's</p> <p>21 missing I-9s. There's -- You know, we've got --</p> <p>22 They would -- If ICE had done an audit, a</p> <p>23 paperwork audit on NuStar, they likely would</p> <p>24 have been hit with a pretty significant fine</p> <p>25 because so many were untimely completed, and</p>	<p style="text-align: right;">Page 296</p> <p>1 continue to employ them; right?</p> <p>2 A. Right. If something puts you on</p> <p>3 constructive notice or actual notice during the</p> <p>4 course of employment, that subjects you to a --</p> <p>5 that's what we've been talking about, is it's</p> <p>6 not necessarily -- the typical example of that</p> <p>7 is, if you get a letter from ICE that says these</p> <p>8 individuals are not authorized for employment or</p> <p>9 they've presented you with suspect documents.</p> <p>10 If you continue to employ after you receive that</p> <p>11 letter from ICE, then you've committed a continued</p> <p>12 employment.</p> <p>13 Q. And so couldn't a reasonable jury conclude</p> <p>14 under a preponderance of the evidence standard that</p> <p>15 NuStar continued to employ at least these six</p> <p>16 workers that we've talked about after obtaining</p> <p>17 constructive knowledge that they were unauthorized</p> <p>18 to work in the United States?</p> <p>19 A. I think it's a very close --</p> <p>20 MR. BISS: Object to the form.</p> <p>21 A. I think I've answered that question a</p> <p>22 few times, but I think it's a very close call,</p> <p>23 and -- and I think I've already answered in the</p> <p>24 affirmative that, yes, a jury could conclude,</p> <p>25 but a jury could also conclude the opposite.</p>
<p style="text-align: right;">Page 295</p> <p>1 that would have been a -- probably a large fine;</p> <p>2 but when it comes to this good-faith analysis</p> <p>3 for purposes of enhancement and mitigation of</p> <p>4 fines, that's what I'm saying there in that</p> <p>5 point. So I should clarify that here. That's</p> <p>6 what I'm saying.</p> <p>7 I don't know and, frankly, I</p> <p>8 don't think they could take advantage of the</p> <p>9 affirmative defense in 1324 for good faith; but,</p> <p>10 in general, do I think in good faith they</p> <p>11 complied with the -- with the requirement to --</p> <p>12 to get documents that are, you know, acceptable</p> <p>13 documents and things, I'm comfortable saying</p> <p>14 that, yes.</p> <p>15 Q. And then with respect to whether NuStar</p> <p>16 continued to employ an individual that it became</p> <p>17 aware of was unauthorized, right, and so we've</p> <p>18 talked about that, where, you know, it's one</p> <p>19 thing to hire somebody you know was unauthorized.</p> <p>20 That's a violation of law.</p> <p>21 A. At the time of hire, correct.</p> <p>22 Q. But it's also a violation of the law</p> <p>23 if -- even though you didn't know at the time</p> <p>24 you hired the person, if you subsequently become</p> <p>25 aware that they are unauthorized, you can't</p>	<p style="text-align: right;">Page 297</p> <p>1 And so, you know, it's a very</p> <p>2 high burden to establish that, particularly when</p> <p>3 there's not evidence in the form of a confirmation</p> <p>4 from ICE or DHS.</p> <p>5 Q. And so I just want to quickly run</p> <p>6 through the rest of your opinions, starting on</p> <p>7 page 7.</p> <p>8 The first one was that NuStar</p> <p>9 had adequate protocols and Form I-9 procedures</p> <p>10 in place between '07 and present to reasonably</p> <p>11 conclude that its employees were legally</p> <p>12 authorized for employment in the United States.</p> <p>13 After all that we've gone through</p> <p>14 today, do you still think that's the case?</p> <p>15 A. I do, and what I'm saying is that they</p> <p>16 had the adequate process in place. They were --</p> <p>17 They were collecting documents from the employees.</p> <p>18 They had adequate procedures in place.</p> <p>19 The problem is, they were not</p> <p>20 completing the I-9 correctly, but they had the</p> <p>21 general idea and protocol that you collect</p> <p>22 the documents at the time of hire to establish</p> <p>23 identity and work authorization.</p> <p>24 We don't have a large chunk of</p> <p>25 missing documents or missing I-9s. I think</p>

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<p style="text-align: right;">Page 298</p> <p>1 there was maybe three out of -- out of -- or 2 maybe there were 17 at one point but three 3 within the scope of retention period. 4 So you don't have a situation 5 where there was just a complete negligent 6 attempt at this. You did have protocols and 7 procedures in place. 8 Now, they would have benefited 9 from an immigration attorney, you know, 10 informing them about the proper way to complete 11 the I-9s, collect the documents and review the 12 documents; but, in general, I do think that they 13 had adequate protocols in place. 14 Q. But there were a lot of instances where 15 they were not -- well, in almost all the instances 16 they were not filling out the heart of the I-9 17 form. 18 A. I agree with that. 19 Q. And in some cases not getting the correct 20 IDs; right? 21 A. In limited cases. 22 Q. And in many cases not attesting that 23 they had done any review whatsoever; right? In 24 209 out of 309 cases they don't even, you know, 25 sign and date the attestation that they had done</p>	<p style="text-align: right;">Page 300</p> <p>1 So what I'm saying is they had a 2 large -- they had a large percentage of documents 3 for their employees that were given to them at 4 the time of hire. All right? But what I say is 5 failure to prepare I-9s for employees are 6 considered serious substantive violations, but 7 missing I-9s alone are not sufficient to 8 establish knowledge of an unauthorized worker. 9 So they had compliance issues, 10 but were they substantially complying with the 11 regulation, yeah, because they were collecting 12 the documents. They were doing -- They were -- 13 They were collecting the correct documents, 14 okay, but they were not filling out the form, so 15 it's -- to me, the OCAHO law says poor compliance 16 is not evidence of anything other than poor 17 compliance with -- 18 Q. Right. 19 A. -- with the I-9 requirement. 20 Q. And we're just talking about, you know, 21 their -- I think you put it their business 22 policies and practices substantially complied 23 with federal law, and I'm just asking how can 24 that possibly be the case when -- 25 A. And I -- Sure.</p>
<p style="text-align: right;">Page 299</p> <p>1 any review. 2 A. Right, which is a substantive violation, 3 but what I'm saying when I say they have adequate 4 protocols in place, they were -- they were 5 collecting the documents at the time of hire. 6 That was established in the deposition testimony. 7 The compliance side of it, the filling out the 8 form part of it was poor. 9 Q. They didn't do that right. 10 A. No, but as far as protocols for collecting 11 the documents, yes. 12 Q. And then the second opinion that you 13 have is that NuStar's business policies and 14 practices substantially complied with federal 15 law. 16 A. Yeah. And if you look at the footnote -- 17 Q. What do you mean by that? 18 A. The same thing we've just discussed. 19 What I'm saying is, poor compliance, extremely 20 poor compliance would be -- would be -- there's 21 a significant amount of companies out there that 22 are operating. They don't have I-9s for any 23 employees. Okay? ICE -- ICE sees that. They 24 go out. You know, that's not unheard of. In 25 fact, it's somewhat typical.</p>	<p style="text-align: right;">Page 301</p> <p>1 Q. -- they are doing -- when they are in 2 almost all instances not filling out the heart 3 of the I-9 form? How could that still be 4 substantial compliance? 5 A. You keep referencing that, and I'm 6 telling -- 7 MR. BISS: Object to the form, 8 asked and answered. 9 A. I'm telling you, the retention and 10 collection of the documents is the heart of the 11 I-9 requirement. Okay? The documents are 12 there. And that's what I'm saying. 13 They did not complete the I-9s 14 correctly on a lot of them, but they did the -- 15 the heart of the work is getting the documents 16 from the employee. 17 So they had the evidence of 18 identity and work authorization for the large 19 majority of the employees, with the -- with the, 20 you know, limited exception of a few missing 21 I-9s. 22 Q. So you can say, hey, look, you know, I 23 collected -- I made photocopies of documents 24 that are clearly not genuine; I avoided, some 25 might say purposefully, filling out an</p>

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<p style="text-align: right;">Page 302</p> <p>1 attestation; and that's still complying with 2 the, you know, heart of the requirement? 3 A. That is not what I'm saying. 4 MR. BISS: Object to the form, 5 argumentative, asked and answered. 6 A. That's not what I'm saying, and I don't 7 agree with the first part of the question. If 8 the first part of the question were -- were 9 accurate, then I would say they did not comply 10 with the requirement, but the first part of the 11 question is very much not accurate, and it's 12 very much subject to the standards that are laid 13 out by years and years of case law in this area 14 that cannot be ignored as to what an employer is 15 required to do. 16 Q. But you would agree with me that many, 17 if not most, of the documents that you saw in 18 these I-9s do not appear to be genuine? And I 19 mean from your perspective as an immigration 20 lawyer, not an employer's perspective. 21 A. The ones that we've looked at today, I 22 would agree from my perspective, as somebody 23 who's looked at thousands and thousands of these 24 and had training at ICE facilities and things of 25 that nature, I would agree.</p>	<p style="text-align: right;">Page 304</p> <p>1 conducting a review at the time of hire and, you 2 know, now completing the I-9s. 3 So that's how we can say that, is 4 that they're doing what is required of employers. 5 Okay? There's -- And what you're talking about, 6 again, is -- is wading into are they burying 7 their head in the sand on a -- on a document 8 fraud issue. There's no evidence. There's no 9 evidence that I reviewed that that is occurring. 10 Okay? 11 Q. No evidence? 12 A. There's -- That that -- That they're 13 knowingly burying their head in the sand on -- 14 on fake documents, there's no corroborating 15 evidence that would say that they're doing that 16 intentionally or knowingly. 17 So what I'm saying is, the -- a 18 reasonable employer, reasonable employers all 19 throughout the United States, are doing the 20 exact same process. 21 And you know what, those 22 documents may look different in different 23 industries, but in general they're doing what 24 the law requires them to do. 25 This entity is doing what the law</p>
<p style="text-align: right;">Page 303</p> <p>1 Q. And so -- And those are representative 2 of the other, you know, 300 some odd I-9s in 3 here; right? 4 MR. BISS: Object to the form, 5 mischaracterizes testimony -- 6 A. They're -- 7 MR. BISS: -- and the documents. 8 A. They're a segment. You know, I looked 9 through the other ones. Some of those -- Some 10 of these same issues are seen in other documents; 11 but, again, we're not talking about -- the 12 inquiry isn't what -- what I know. It's what a 13 reasonable employer would know. 14 Q. Right. And what I'm getting at, though, 15 is how can we say that they have a sufficient 16 system set up and are substantially complying 17 with the law if they're collecting a bunch of 18 fake documents? 19 A. Because they're doing -- They're -- 20 MR. BISS: Object to the form. 21 A. We don't know that they're collecting a 22 bunch of fake documents until ICE or DHS tells 23 us that; but even assuming that's correct, the 24 employer is doing what the law requires, which 25 is collecting the documents from the employees,</p>	<p style="text-align: right;">Page 305</p> <p>1 requires them to do, which is receive the 2 documents from the employees, conduct a review. 3 If they're genuine on their face and they appear 4 to relate to the employee in front of them, 5 they're moving -- they're moving on. They're 6 hiring the individual. That's what employers 7 are doing all throughout the United States. 8 That's what they're tasked to do. 9 Q. It doesn't mean that that's all they're 10 required to do. It means what they're doing; 11 right? 12 A. No, that's what they're required to do. 13 Now, there's a -- there's a level of -- there's 14 a level of diligence that they -- they have to 15 conduct; and that's what we've been talking 16 about, this fact -- you take each one on a 17 case-by-case basis, the level of inquiry that's 18 required. 19 Q. On page 8, kind of halfway down, you 20 state that the only truly way to establish 21 someone is illegal or unauthorized is through a 22 sworn statement from the individual or a Form 23 I-213. 24 A. Yeah. We talked about that early this 25 morning, that that's the way the government</p>

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<p style="text-align: right;">Page 306</p> <p>1 establishes that somebody is unauthorized or 2 unlawful -- unlawfully in the country is through 3 that document. 4 Q. But isn't the case law clear that you 5 can do it without a sworn statement or a 213? 6 A. You can do -- 7 Q. You can establish somebody is here 8 illegally without a 213 or a sworn statement 9 from that individual; is that right? 10 A. By making a negative inference. They're 11 very rare. You'd have to have an insurmountable 12 amount of evidence. You could not deport that 13 person on that basis. That's what I'm saying. 14 Q. Right. 15 A. You cannot remove an individual from 16 this country without first establishing they're 17 here unlawfully. The way you establish that is 18 through an I-213 or a sworn statement or some 19 finding of an immigration judge or ALJ that that 20 person is removable based on the evidence that 21 was presented at a hearing. You cannot look at 22 a person and say that they're unauthorized. 23 Q. Right. And so what I'm talking about is 24 not a removal proceeding, but just establishing to 25 a reasonable jury that somebody is not authorized</p>	<p style="text-align: right;">Page 308</p> <p>1 of halfway through you make the point that, 2 you know, look, there's never been a legal 3 determination made by a court, ALJ, or 4 enforcement agency that NuStar knowingly hired 5 or continued to employ an unauthorized employee. 6 How do you know that? 7 A. I mean, I know it through the absence 8 of any evidence that was shown to me that would 9 establish that. 10 If there was some evidence to the 11 contrary, then I presume that would have been 12 provided to me. The -- And what I'm saying is 13 if someone is going to say that an employer has 14 relied -- knowingly relied on unauthorized 15 workers, someone is going to say that, an actual 16 determination through a final order or through a 17 court in which they were found guilty of doing 18 that or responsible for doing that would be 19 the only legitimate evidence to support such a 20 claim. 21 To my knowledge they've never 22 been subjected to an ICE enforcement action or 23 issued a final order or had any court or ALJ 24 deem them to have violated 1324. 25 Q. And that doesn't mean that they aren't</p>
<p style="text-align: right;">Page 307</p> <p>1 to work in the United States, and I'm saying that 2 there is nothing in the law that says I would have 3 to have a sworn statement from that individual 4 or a Form 213; is that correct? 5 MR. BISS: Object to the form, 6 asked and answered. 7 A. Again, I characterized -- said the only 8 way to truly establish it, right, is through an 9 I-213 or a sworn statement. 10 There is some support in some cases 11 out there that you can establish an individual is 12 unauthorized for employment through other evidence, 13 right, and I'm not fighting you on that at all. 14 Q. Okay. 15 A. There is support for that. 16 Q. It would be nice to have a 213 or a sworn 17 statement, though; right? 18 A. It would be -- 19 Q. That's what you look for. 20 A. That is what you would -- 21 Q. Yeah. 22 A. That's where you would feel comfortable 23 moving forward with that. 24 Q. I totally get that. I totally get that. 25 The next page, page 9, kind</p>	<p style="text-align: right;">Page 309</p> <p>1 violating 1324. That just means that it hasn't 2 been enforced against them; right? 3 A. There has been no finding that they 4 are. There's been no legitimate finding that 5 they have. 6 Q. Right. And what I'm saying is that 7 just because the statute hasn't been enforced 8 against them yet doesn't mean they haven't 9 violated it; correct? 10 A. I mean, you'd have to get into that, 11 right? You'd have to get into what the word 12 "violated" means in that sense, you know, but I 13 agree that you can -- you can -- you can commit 14 an act without being found guilty of the act or 15 there being a formal finding of an act. Yes, I 16 agree with that. 17 Q. Okay. And so, put differently, there 18 are likely a lot of employers out there who have 19 violated 1324a and never had any enforcement 20 action against them. Isn't that fair? 21 A. That's fair. 22 MR. BISS: Object to form. 23 MR. KLINEFELDT: I think I am 24 just about done. Can we have just two minutes 25 off the record? I want to consult with my</p>

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<p style="text-align: right;">Page 310</p> <p>1 colleague here, and then we'll jump right back 2 on. Okay, Steve? 3 MR. BISS: Thank you, Nick. 4 THE VIDEOGRAPHER: We are going 5 off the record. The time is 4:41. 6 (A recess was taken.) 7 THE VIDEOGRAPHER: We are on the 8 record. The time is 4:45. 9 Q. Mr. Samson, I just had a couple of 10 clarifications I wanted to ask you about. 11 One is, at one point we talked 12 about, and I think you agreed with me, that the 13 case law states that the heart of I-9 compliance 14 is the completion of Section 2. 15 Do you agree with me on that? 16 A. Yes, I do agree it is, in the sense that 17 that is the part of the process that includes the 18 collection of documents and the review of the 19 document. 20 The case law that's discussing 21 that involves that, and then it also discusses 22 why it's important that the employer certifies 23 or attests to that review. That is essentially 24 the heart of the I-9 requirement. I agree with 25 that. I agree that there's case law out there</p>	<p style="text-align: right;">Page 312</p> <p>1 have words on a piece of paper. 2 Q. And I know you didn't have the 3 opportunity to do a full I-9 audit here, but if 4 it was the case that NuStar actually was not 5 collecting all the documents at the time of hire 6 in a significant number of cases, would that 7 change your opinion? 8 A. That would likely -- 9 MR. BISS: Object to the form. 10 A. That would -- That would change my 11 opinion in the sense that if you told me there 12 was, you know, a large percentage of time where 13 they weren't or, you know, that the timeliness 14 was -- was a real, you know, issue and things of 15 that nature, then, yeah. 16 In those, then, yeah, that would 17 be a -- that would be a harder statement to 18 protect or to back up; but the fact of the 19 matter is, from the -- you know, I reviewed the 20 deposition testimony. I saw -- I reviewed, you 21 know, a significant amount of the I-9s; and, in 22 general, what I used as the basis for that is 23 that they were collecting the documents from the 24 employees, they had List B and List C documents 25 or List A documents, which is to me the meat of</p>
<p style="text-align: right;">Page 311</p> <p>1 that says that. 2 Q. And so it's not really the -- just the 3 collecting of documents that's the heart of the 4 I-9 compliance, it's really the completion of 5 Section 2 that's the heart of the I-9 compliance; 6 right? 7 A. In conjunction -- If you look at the -- 8 If you look at the language from those decisions, 9 it's in conjunction with the receipt and review of 10 the documents. 11 Q. And I believe you had testified that 12 the reason that you concluded that NuStar was 13 substantially compliant with the law here was the 14 fact that it was at least properly collecting 15 the documents. Is that fair? 16 A. That was the basis for me making that 17 statement. That's what -- I find that to be the 18 most -- In my experience, that's the most 19 important element of the I-9 requirement, is 20 that the employees are -- or is that the 21 employer is requiring the employees to present 22 that, those documents, at the time of hire. 23 That's -- To me that is the meat 24 of the -- of the whole process. Without that 25 part of the process, you don't even -- you just</p>	<p style="text-align: right;">Page 313</p> <p>1 the requirement. 2 They in no means, and not even 3 close, were they -- were they compliant on just 4 an I-9 sense; but with regard to the other 5 requirements of this area, you know, I found 6 that they were compliant and had protocols in 7 place that, had they been executed better, it 8 would -- you know, it would have been completely 9 compliant. 10 MR. KLINEFELDT: Okay. I have no 11 further questions. 12 Mr. Biss, do you have any questions? 13 MR. BISS: Sure. 14 CROSS-EXAMINATION 15 BY MR. BISS: 16 Q. Mr. Samson, I have just one question, 17 and it might be -- might morph into two. 18 We have been going for a number 19 of hours today, and counsel had asked you a 20 number of questions. 21 Have any of the questions that 22 counsel has asked you, in any way have they 23 changed -- have they caused you to change the 24 opinions stated in your expert report? 25 MR. KLINEFELDT: Objection, form.</p>

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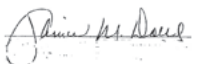
<p style="text-align: right;">Page 314</p> <p>1 A. No. I think any -- any of the 2 statements I made in my report were properly 3 limited in their scope to -- in the sense of 4 what I was, you know, referring to. So, no, I 5 would answer no. 6 Q. All right, sir. And as a result of any 7 of the questions that counsel asked you today, 8 in other words, in light of -- in light of or in 9 the face of the questions that you were asked 10 today, do you stand behind the opinions stated 11 in your report? 12 A. I do. 13 MR. KLINEFELDT: Objection, form. 14 MR. BISS: All right. I don't 15 have any other questions. 16 MR. KLINEFELDT: All right. I 17 think that's it. We can go off the record. 18 MR. BISS: Okay. Hold on. Before 19 we go off the record, I need to make sure of one 20 thing. I don't know who is in the room there 21 other than Mr. Samson. Nick, I know you're 22 there and the court reporter is there. 23 MR. KLINEFELDT: Yep. And we 24 have -- 25 MR. BISS: In light of -- In</p>	<p style="text-align: right;">Page 316</p> <p>1 with the protective order attestations, and I 2 believe Mr. Wright has now, like me, entered an 3 appearance in this case. 4 MR. BISS: Yeah. I think I saw 5 the text order come in today he's been -- he's 6 been admitted. 7 And the court reporter signed a 8 witness assurance declaration? 9 MR. KLINEFELDT: Yeah. Both the 10 court reporter and the videographer were the 11 same as you -- that were here before when you 12 were here, Steve. They've been in this case 13 before. 14 MR. BISS: Okay. I appreciate 15 it. Just, once again, I'm going to mark and 16 designate the entire deposition counsels' eyes 17 only, so I just wanted to be extra cautious with 18 this, with this deposition. Thank you, guys. 19 MR. KLINEFELDT: Yep. Thanks, 20 Steve. 21 THE VIDEOGRAPHER: Ready to go 22 off the record? 23 MR. KLINEFELDT: Yes. 24 THE VIDEOGRAPHER: Okay. We are 25 off the record at 4:52 p m., and this concludes</p>
<p style="text-align: right;">Page 315</p> <p>1 light of -- In light of the -- some of the 2 things that have happened recently in this case, 3 I want to make sure that I understand who is in 4 the room other than -- than counsel, and I want 5 to make sure that anybody in the room has signed 6 the witness assurance declaration that was 7 attached to the protective order. 8 I want to make sure that under no 9 circumstances are the contents of the deposition, 10 including the contents of any of the exhibits 11 that were referred to today, leaked to the press 12 or to the public. 13 So can we just do a roll call and 14 make sure that we identify on the record who is 15 present during the deposition? 16 MR. KLINEFELDT: Yeah. And it's 17 the -- 18 MR. BISS: Or can you just tell me, 19 Nick, put it on the record? 20 MR. KLINEFELDT: It's the same as 21 been here all day and that we announced at the 22 beginning of the deposition. 23 It's been myself, Nick Klinefeldt, 24 and my partner, Scott Wright, both from the 25 Faegre Drinker Law Firm, and we've complied</p>	<p style="text-align: right;">Page 317</p> <p>1 today's testimony given by Clete Samson. The 2 total number of media units used was five and 3 will be retained by Veritext Legal Solutions. 4 (Deposition concluded at 4:52 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p>1 C E R T I F I C A T E</p> <p>2 I, the undersigned, a Registered</p> <p>3 Professional Shorthand Reporter and Notary</p> <p>4 Public, do hereby certify that I acted as the</p> <p>5 Registered Professional Reporter in the</p> <p>6 foregoing matter at the time and place indicated</p> <p>7 herein; that I took in shorthand the proceedings</p> <p>8 had at said time and place; that said shorthand</p> <p>9 notes were reduced to typewriting under my</p> <p>10 supervision and direction, and that the</p> <p>11 foregoing pages are a full and correct</p> <p>12 transcript of the shorthand notes so taken; that</p> <p>13 said transcript was not submitted for review</p> <p>14 I further certify that I am</p> <p>15 neither attorney nor counsel for, or related to</p> <p>16 or employed by any of the parties in the</p> <p>17 foregoing matter, and further that I am not a</p> <p>18 relative or employee of any attorney or counsel</p> <p>19 employed by the parties hereto, or financially</p> <p>20 interested in the action</p> <p>21 IN WITNESS WHEREOF, I have</p> <p>22 hereunto set my hand and seal this 10th day of</p> <p>23 September 2021</p> <p>24 </p> <p>25 REGISTERED PROFESSIONAL REPORTER</p> <p> and NOTARY PUBLIC</p>	<p>Page 318</p>
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